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Massachusetts Law Quarterly

SPECIAL NUMBER, JANUARY, 1934

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REPORT

OF THE

SPECIAL CRIME COMMISSION

UNDER CHAPTER 54 OF THE RESOLVES OF 1933.

AN INDEX ITEM NUNC PRO TUNC.

(Accidentally Omitted from Table of Contents of November Number.)

THE PETITION AND RESOLVE RELATIVE TO THE MOVEMENT TO REVIVE THE DEFEATED CHILD LABOR AMENDMENT—VOL. XIX, No. 1.
November Number Page 108

Issued Quarterly by the
MASSACHUSETTS BAR ASSOCIATION, 60 State St., Boston, Mass.

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A PICTURE GALLERY OF THE ADMINISTRATION OF JUSTICE — EIGHT CARTOONS FROM THREE MASSACHUSETTS NEWSPAPERS BETWEEN OCTOBER, 1933 AND JANUARY, 1934.

In view of the recent disclosures as to "jury fixing" in civil cases, the laxity of practice in regard to criminal bail, the proceedings in recent criminal trials and the apparently feeble position in which the Commonwealth finds itself as a result of real, or supposed, constitutional or statutory restrictions upon the courts in the conduct of trials, in regard to the rules of evidence, and other procedural matters,—we have kept a scrapbook of newspaper clippings for the past few months. This collection consists of the news accounts following glaring headlines, cartoons and editorial comments mostly from Boston papers.

A great many newspaper readers look at pictures more closely than they do some of the reading matter, particularly if they are in a hurry. Accordingly, we reproduce these cartoons from three different papers in order that the bar may appreciate clearly the public impression of the administration of justice as reflected by the cartoonists.

A Note of Caution.

We do not suggest that these cartoons are fair to the courts, the bar or the law *as a whole*. They are not. They simply emphasize certain aspects of a problem which demand attention. It is the function and the proper function of cartoons to make people wake up and *think* and *act*. The cartoons of Thomas Nast are famous for their influence. Many newspaper readers undoubtedly realize that whatever the faults of our system, or of our courts, or our bar, there is another side to the picture which does not appear in these cartoons but as one of Mr. Dooley's characters said, "there's no news in being good."

Those who have seen the recent articles by John Bantry and others in the *Boston Post* and who have followed the news in regard to "jury fixing", in the recent disbarment hearings, and other court news, will appreciate that these cartoons represent impressively the growing emphasis in the community upon the need of thought and action on both sides of the bench and of the legislature.

The November number of the QUARTERLY contained the ninth Report of the Judicial Council. This number contains the full report of the "Crime" Commission. The February number will contain the chapter on the District Courts from the Report of the special Commission on Public Expenditures.

In the QUARTERLY for February, 1933, we opened a discussion of "Caustic Comments on the Legal Profession, Past and Present" by quoting the last stanza of Robert Burns' poem, "To a Louse". We quote it again here as it seems to provide a fitting introduction to the picture gallery and a sufficient explanation of the reason for reproducing the pictures.

"O wad some power the giftie gie us
To see oursels as others see us!
It wad frae monie a blunder free us
An' foolish notion:
What airs in dress an' gait wad lea'e us,
And ev'n devotion!"

"Devotion" to *some* "time-honored" practices does not seem to inspire respect and confidence.

Perhaps one lesson from all this is that Massachusetts needs a system of criminal appeal by which the Commonwealth can raise questions of law for decision by the Supreme Judicial Court. Other jurisdictions have such a system. We need one. At present, no doubtful question of criminal law can be raised before the appellate court unless the trial judge rules against the defendant and he carries it up. It is a weak system—unfair to the public and to defendants. Massachusetts ought to be able to get a question of criminal law settled by the highest court without throwing the burden of the appeal on the defendant. Why should not the Commonwealth be able to find out what its own law means for the guidance of the courts in the protection of society?

F. W. G.

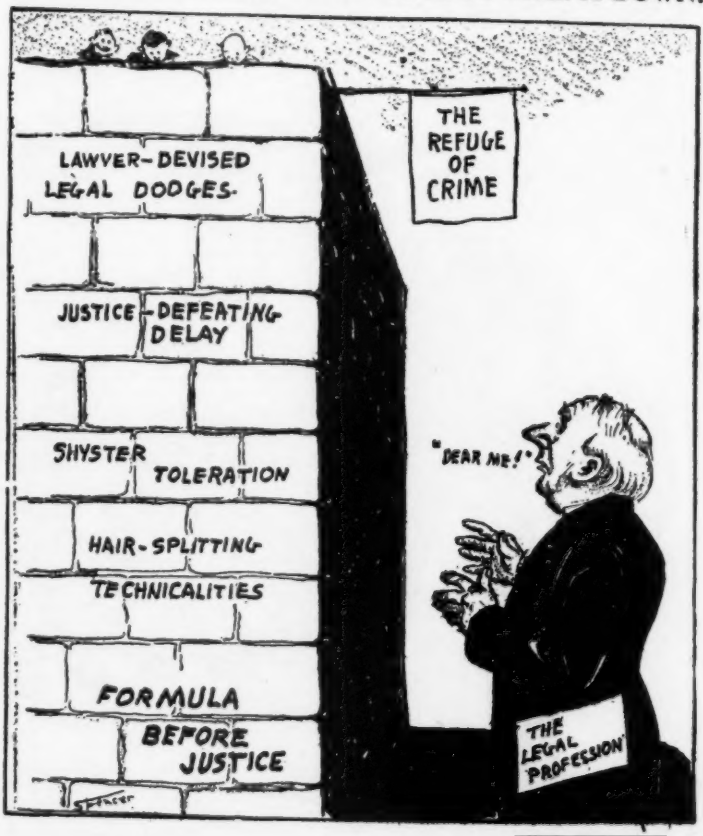
THE BOSTON HERALD, SUNDAY, JANUARY 14, 1934

PASSED

—PORTLAND OREGONIAN

BOSTON HERALD, TUESDAY, OCTOBER 3, 1933

HE BUILT IT—WHEN WILL HE MOVE TO TEAR IT DOWN?



—OMAHA WORLD-HERALD

Asleep on Duty

(From the Boston Post of October 24, 1933.)

The 12 Men "Good and True"

(From the front page of the Boston Post of October 25, 1933.)

The Reception Committee

(From the Boston Post of October 27, 1933.)

NOT MUCH ROOM FOR HER

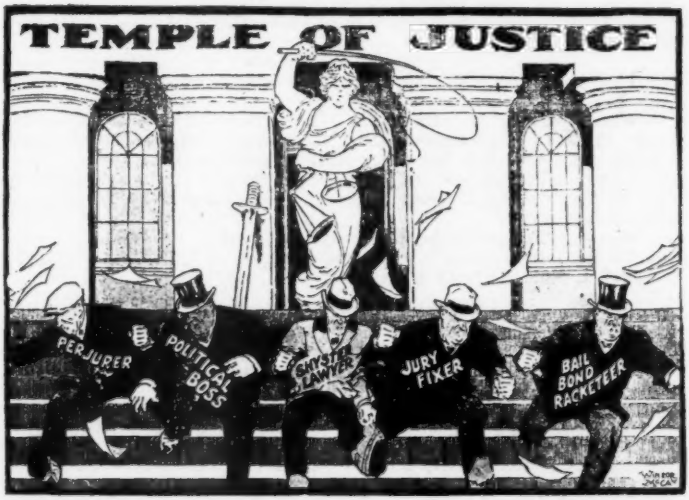
LOS ANGELES TIMES

(From the Boston Herald of December 25, 1933.)

BOSTON POST, WEDNESDAY, DECEMBER 27, 1933

THE WOLF AT THE DOOR

Drive Them Out!



(From the Boston American of January 2, 1934.)

HOUSE BILL 718 — PROCEDURE TO ALLOW MASSACHUSETTS TO DISCOVER THE MEANING OF ITS OWN CRIMINAL LAW.

A bill is now pending before the Judiciary Committee (House 718) to provide procedure in Massachusetts similar to that in the United States Courts, and the following memorandum has been handed to us in regard to it.

Below on the left is Section 346 of Title 28 of the Federal Code and on the right a proposed G. L. 278, Sec. 30a.

U. S. Code T. 28, §346.

In any case, civil or criminal, in a circuit court of appeals, or in the Court of Appeals of the District of Columbia, the court at any time may certify to the Supreme Court of the United States any questions or propositions of law concerning which instructions are desired for the proper decision of the cause; and thereupon the Supreme Court may either give binding instructions on the questions and propositions certified or may require that the entire record in the cause be sent up for its con-

Proposed new §30A of Mass. G. L., chap. 278 (contained in House Bill 718).

In any criminal case in any court in the Commonwealth the court at any time may certify to the Supreme Judicial Court for the Commonwealth any questions or propositions of law concerning which instructions are desired for the proper decision of the cause; and thereupon the Supreme Judicial Court for the Commonwealth may in its discretion give binding instructions on the questions and propositions certified or may in its

sideration, and thereupon shall decide the whole matter in controversy in the same manner as if it had been brought there by writ of error or appeal.

discretion require the whole record in the cause to be sent up for its consideration, and thereupon shall decide the whole matter in controversy in the same manner as if it had been brought there by appeal, exceptions, or report.

The foregoing statutory provision leaves the jurisdiction with the lower court to determine whether assistance is desired but makes it equally plain that the full bench has jurisdiction to refuse to entertain the matter. The action is upon the initiative of the lower court which may or may not be stimulated thereto by the litigant by an application made below.

Below in like parallel columns will be found—

On the left below is the *certiorari* section of the Federal Code Title 28, §347 and on the right a proposed G. L. 278/30B.

U. S. T. 28, §347 (a).

(a) In any case, civil or criminal, in a circuit court of appeals, or in the Court of Appeals of the District of Columbia, it shall be competent for the Supreme Court of the United States, upon the petition of any party thereto, whether Government or other litigant, to require by certiorari, either before or after a judgment or decree by such lower court, that the cause be certified to the Supreme Court for determination by it with the same power and authority, and with like effect, as if the cause had been brought there by unrestricted writ of error or appeal.

Proposed new §30B of Mass. G. L. (contained in House Bill 718).

In any criminal case in any court in the Commonwealth it shall be competent for the Supreme Judicial Court for the Commonwealth upon the petition of any party thereto to require by certiorari either before or after a judgment or decree by such court that the cause be certified to the Supreme Judicial Court for the Commonwealth for determination by it with the same power and authority and with like effect as if the cause had been brought there by appeal, upon exceptions, or by report.

JURY FIX?

(From the Boston Traveler of January 18, 1934.)

Shrewd men would not be so crude as to bribe jurors in a way that would leave evidence.

Nor need the dollar be the only key to jury fixing. Friendship might well serve the same purpose, friendship among jurors, friendships shown within the bar enclosure.

Counsel for both prosecution and defence are important figures in every case, in particular before the eyes of the jurors. It would not be impossible for a shrewd attorney to win support for his client with the jury in a way which would defy proof of guilt.

A man is on trial. A jury is hearing the case. Counsel for defence is within the bar enclosure. What could be more natural for a friend of counsel to approach him within the bar enclosure and greet him with obvious friendship? It might even be possible that the friend of counsel for the accused was a friend of somebody on the watching jury. And the affability could scarcely be ignored.

Frankly, there is too much of a tendency to convert bar enclosures into places of social greeting. At times the offence against ethics is

repeated, now and then by attorneys who should know better, who are in fact, among the first to ferret out and expose wrongdoing. While their visits are above reproach, they are part of a custom which might well be ended.

NOTE.

The QUARTERLY for August, 1925, (pp. 50–51) contains an account, which appeared in the *Boston Post*, of the practice of "fondling defendants publicly in the court room" by "politicians." An editorial note on the common law crime of "embracery" was added. The practice described in the editorial from the *Traveler* above quoted may be of a similar character. Newspapermen are apt to know what is going on. Accordingly we reprint the editorial for the information of the bar and of the judges of the Superior Court.

FEEBLE PROCEDURE IN A CRIMINAL CASE.

The newspapers of January 12, 1934, contained accounts of a murder trial in Dedham which presents serious problems. As reported in the *Boston Herald:*

Daly was on trial in Norfolk Superior Court at Dedham on a charge of first degree murder in connection with the slaying November 1, 1932, of Harry "Pop" Riddell, 67, an Atlantic baker.

It was the second time Daly had been on trial for the murder. In May, 1933, the jury disagreed. Bowen a few days previously had pleaded guilty to a charge of second degree murder and had been given the life sentence.

In the first trial of Daly, Bowen was the chief witness for the government and although he admitted that it was he and not Daly who killed the baker, Bowen testified that Daly was with him on the night the crime was committed.

Bowen, who had been waiting in the Dedham courthouse for the past three days, was the last witness called by the government. When he took the witness stand and was told to put up his hand to be sworn he did so. When he was asked his name by Assistant District Attorney Arbuckle he replied that he refused to answer any questions.

* * * * * * * * * *

"Has anybody discussed this case with you since the last trial?" was the next question by Arbuckle.

"Nobody," answered the witness.

"Has anybody talked with you in behalf of Daly?" asked Assistant District Attorney Arbuckle.

"Nobody," replied the witness.

Then addressing the court, Arbuckle suggested that a recess might be taken. This was assented to by the court but before doing so Judge Brown said to the witness: "It is your purpose regardless of what testimony you gave at the last trial to refuse to answer the questions here?"

"Yes, your honor."

The court then took a recess and came in an hour and a half later.

Addressing the court Arbuckle said: "If your honor please, I realize perhaps never in the history of the Commonwealth have the forces of lawlessness and destruction been waged against society any more bitterly than being done at the present time. The Commonwealth finds itself in this position, however, in the trial of this case. The most important

witness called by the Commonwealth refused to testify, and the only weapon used to compel that witness to testify is to impose a jail sentence.

"This witness, however, is serving a life sentence. The weapon in the hands of the court to compel that witness to testify is useless.

"Now in the absence of the testimony that I expected to introduce through that witness I feel it incumbent on me as assistant district attorney of this Commonwealth to say that in performing my duties I have the keenest sense of responsibility. The responsibility extends to the defendant in each criminal case. My duty under my oath of office compels me to safeguard the interest of society to the best of my ability.

"In this case however, in the absence of the testimony of the government's important witness, I feel it would be unfair of me, as a representative of the Commonwealth, to ask this jury to convict this defendant of the crime that the government alleges in this indictment.

"Accordingly I move for a direct verdict."

"Well, Mr. District Attorney," said Judge Brown, "I, as you know, have gone over this with you carefully. In view of the unexpected refusal of Mr. Bowen to testify I have no hesitation in saying that I am in entire accord with the position that you take. When jail has no terrors for man, or when he is serving a sentence you can't extend, the court is powerless to handle a contumacious witness. As I have been informed in the course of conferences in the lobby it is certain that you could not hope to convict, and you should not ask to convict, this defendant without the benefit of the story which Mr. Bowen has available but will not present.

"I therefore shall adopt your suggestion, and commend you for your attitude."

Addressing the jury the court said:

"You may therefore, Mr. Foreman and gentlemen, return a verdict of not guilty in this case, and when inquired of by the clerk you will so answer, Mr. Foreman."

If correctly reported, this picture presents the Commonwealth of Massachusetts in a feeble position which demands attention and has caused some conversation at the bar. It has been suggested that while the court could not extend the term of imprisonment of the witness under life sentence the court might have ordered solitary imprisonment as a penalty for contempt for failure to testify. We understand that Judge Morton of the Federal Court in the Redmond bankruptcy case some years ago committed Redmond to "close confinement" for contempt and Mr. Redmond decided to tell the facts. Accordingly the failure to use the power of the court appears to be feebleness No. 1.

The fact that puzzles us most, however, is the fact that the testimony of the recalcitrant witness at the first trial, which must have been in the possession of the government in stenographic form, was not offered in evidence and ruled upon by the court. In Norman & Houghton's "Massachusetts Trial Evidence", 2nd Ed. Sec. 152, the Supreme Judicial Court is quoted as follows:

> "It is a well established rule in both civil and criminal cases that evidence of what a deceased person testified to at a former trial is competent in any subsequent trial of the same issue between the same parties or their privies, provided the former testimony can be substantially reproduced in all material particulars."

It appears to be an open question whether the same rule does not apply where the witness has become insane, as it applies in civil cases. There seems to be no sufficient reason why the rule as to prior testi-

mony under full cross-examination of a dead witness should not be applied to other cases in which the court is satisfied that the testimony of the witness in person is not obtainable. Why in the name of commonsense should it not be admissible under such circumstances, particularly under the circumstances presented in this trial?

The witness was on the stand in the defendant's presence. He had already testified fully in the first trial under cross-examination. Why could not the prosecution read his testimony in his presence and hearing and in the presence of the defendant and let him deny it or let the defence call him to deny it if they wished? Could one produce a situation which called more loudly for the courts to follow the example of the Supreme Court of the United States in the recent case of *Funk* v. *United States* decided December 11, 1933, about a month before this trial in Dedham? —Mr. Justice Sutherland in that case over-ruling former decisions as to the admissibility of a wife's testimony at the trial of her husband decided that it was the duty of the court "to decide it in accordance with present-day standards of wisdom and of justice rather than in accordance with some outworn and antiquated rule of the past."

Doubtless the Superior Court judge and the prosecuting attorney in the case at Dedham felt that the rule against the admissibility of former testimony except to contradict the present testimony of the witness was so clearly established that even under these peculiar circumstances it should not be admitted.

We do not criticize them for this decision, but we submit that the law of the Commonwealth is responsible for this feebleness Number 2. If there were an adequate procedure for criminal appeal by which the government could find out from the Supreme Court what its own law means as applied to such a peculiar condition, the people of the Commonwealth would not be placed in the humiliating position of having both the court and the prosecuting officer and the cause of justice dominated by a recalcitrant witness upon the stand.

It was somewhat reassuring to notice that the defendant in the case referred to after acquittal *accepted* a sentence of two years or so for a relatively minor charge but such *acceptance* illustrates President Lowell's statement before the legislative committee recently, that our procedure is so arranged that defendants frequently dictate their own sentences.

F. W. G.

GENERAL NEEDHAM'S VIEWS ON POLICE TRAINING IN DEALING WITH THE CRIME PROBLEM AND HIS BILL TO SECURE SUCH TRAINING.

(From the Boston Post of January 21, 1934.)

The charge that the police of most of the 355 cities and towns of Massachusetts are absolutely unfit to cope with "the very grave crime conditions of today" was made last night by General Daniel Needham, head of the State police.

The occasion was a banquet of the Ten of Us Club, an affiliate of the Ancient and Honorable Artillery Company, held at the Copley-Plaza Hotel.

With murder cheap, and with criminals scornful of human life, General Needham stated that most cities and towns of this State are fighting the menace with police forces that are equipped and trained "to arrest drunks, or quell street corner fist fights, but are helpless in the face of modern crime."

To combat crime as it now exists—and even flourishes—the great need of all these cities and towns is schooling for police officers and radio-equipped cruising cars, General Needham declared.

No city but Boston has any school at the present time for its police, the general revealed, and only 52 of the 355 cities and towns have radio-equipped cars.

"You wouldn't send an army into the field without training," General Needham said, "yet we send our police to work without training of any kind. In most cities and towns an officer is appointed to the force and is immediately given a gun, a club and a badge, and told to 'patrol Main Street.'

"He takes his equipment and walks down the street without further ado. And the minute he steps out, he is the most dangerous man on that street—with a gun he doesn't know how to handle, and the authority of a badge whose full significance he doesn't understand."

There are 12,000 municipal policemen and a mere handful of 260 State troopers in Massachusetts, he pointed out.

He not only cited proper schooling as an absolute necessity of competent police work in Massachusetts, but emphatically declared that the schools must make adequate provisions to qualify none but really intelligent men for the forces.

The State police, he said, take beginners for a three months' schooling in all fundamental branches of police work, including knowledge of criminal law, laws of evidence, horsemanship, etc. They insist on a further apprenticeship of three months before the student is really qualified. Meantime, his general intelligence is established.

With regard to radio, he stated that police cruising cars without such equipment are today "absolutely useless."

"The problem of the criminals of this present era is acute," he said. "They have learned to use guns, and they have absolutely no regard for human life.

"In Fitchburg, recently, they shot and killed a man without compunction, on a street near Main Street, because he refused to get into a car and be robbed. And they put a bullet through the back of a bystander who tried to help him.

"Hundreds of criminals who were in the bootlegging business, making easy money, are thrown out of it. You don't think they're going to go to work digging ditches, do you?—No, they're not. They're going to find other criminal ways of making easy money."

GENERAL NEEDHAM'S BILL.

An Act providing for the Establishment in the Department of Public Safety of a Board of Police Training and Education.

Chapter twenty-two of the General Laws as appearing in the Tercentenary Edition thereof, is hereby amended by adding at the end thereof the two following new sections:—

Section 13. There shall be a board of police training and education in the department, consisting of the commissioner as chairman, and one district attorney, three chiefs of police of cities or towns and two members of the state police, all of whom shall be appointed by the commissioner. Each appointive member shall serve for a term of five years from the date of his appointment, except that the terms of the persons first appointed hereunder shall be so designated by the commissioner that the terms of two members will expire each year. Any vacancy occurring in said board shall be filled by the commissioner for the unexpired term, and if any member ceases to hold the office qualifying him for membership on the board as above provided, he shall thereupon cease to be a member thereof and a vacancy shall be deemed to have been cre-

ated hereby. The board shall make provision for the establishment and conduct of a school of instruction and training for police officers, and may make rules and regulations for the conduct and discipline of said school. It shall grant a certificate of qualification in police training and education to police officers satisfactorily completing the courses prescribed. The necessary expenses of the board incurred in the performance of its duties shall be paid by the department. Such clerical and other assistance as may be required by the board shall be assigned to it by the commissioner.

Section 14. A city or town and the metropolitan district commission may assign candidates for appointment to its police force and members of its regular or permanent police force to attend said school without loss of their ordinary salaries. The maintenance of persons attending said school and other expenses connected with the establishment and conduct of said school shall be paid by the department.

Section 2. Chapter one hundred and forty-seven of the General Laws is hereby amended by inserting after section eight the following new section:—

Section 8A. Except in Boston, no person shall be appointed, on or after January first, nineteen hundred and thirty-five, to the regular or permanent police force in a city or town, or as a member of the metropolitan district commission police, unless he has received a certificate of qualification in police training and education as provided in section thirteen of chapter twenty-two. Nothing contained in this section shall prevent a city or town or the metropolitan district commission from subjecting appointees to the police service therein to such other and further instruction as it may deem advisable.

THE PROPOSAL TO ALLOW DESCRIPTIONS OF MEASURES BY TITLE UNDER THE I. & R.—THE OPPOSITION AND SUBSTITUTE BILL SUGGESTED.

The Secretary of the Commonwealth (in H. 137 and H. 138) makes the following recommendation:

> "Article XLVIII of the Amendments to the Constitution, General Provisions, III, Form of Ballot, provides for the form in which questions relating to amendment to the Constitution or laws submitted to the people shall be printed on the ballot. Under the present law the Attorney-General has not authority to condense these questions. It is my belief that such questions should be more briefly expressed. I therefore recommend an amendment to that part of the Constitution above mentioned by striking out in the first paragraph the words 'a description to be determined by the attorney-general' and inserting in place thereof the words: —its title,—by striking out in the second paragraph the word 'description' and inserting in place thereof the word:—title,—and by striking out in the third paragraph the word 'description' and inserting in place thereof the word:—title."

The reasons against this plan were stated in the QUARTERLY for February, 1933, pp. 76–77.

SUGGESTED SUBSTITUTE FOR SENATE 138.

(Submitted to the Committee on Constitutional Law, January 24, 1934.)

AN ACT TO PROVIDE THAT QUESTIONS ON BALLOTS MAY BE MORE BRIEFLY AND INTELLIGIBLY EXPRESSED.

Section 1. Questions submitted to the voters under Article 58 of the Amendments to the Constitution shall (may) describe the law or the constitutional amendment to be voted upon by a description incorporated by reference and shall (may) be printed on the ballot substantially as follows:

> "Shall an amendment (or a law) a description of which is printed below and numbered which was approved (or disapproved) by the General Court by a vote of in favor and against, be approved?"

Section 2. This act shall take effect upon its passage.

NOTE.

If the legislature has any doubt as to the constitutionality of this act, an advisory opinion may be requested from the Justices of the Supreme Judicial Court. I do not believe there is the slightest doubt of its constitutionality in view of the time-honored practice in all kinds of legal documents of "incorporation by reference".

F. W. GRINNELL.

SENATE No. 125

The Commonwealth of Massachusetts

REPORT

OF THE

SPECIAL CRIME COMMISSION

UNDER CHAPTER 54 OF THE RESOLVES OF 1933

DECEMBER, 1933

BOSTON
WRIGHT & POTTER PRINTING CO., LEGISLATIVE PRINTERS
32 DERNE STREET
1934

The Commonwealth of Massachusetts

DECEMBER 14, 1933.

To the Honorable Senate and House of Representatives.

We have the honor to transmit the following report of the Special Crime Commission, in accordance with chapter 54 of the Resolves of 1933.

Respectfully submitted,

FRANK L. SIMPSON, *Chairman.*
DANIEL J. LYNE.
CHAS. H. COLE.

CONTENTS.

The Commonwealth of Massachusetts

REPORT OF THE SPECIAL CRIME COMMISSION.

PART I.

INTRODUCTION.

Following a special message by the Governor to the Legislature, dated July 13, 1933, chapter 54 of the Resolves for 1933 was adopted and was approved on July 22 of this year. That resolve is as follows:

RESOLVE PROVIDING FOR AN INVESTIGATION BY A SPECIAL UNPAID COMMISSION RELATIVE TO THE PREVALENCE OF CRIME AND MEANS FOR THE SUPPRESSION THEREOF.

Resolved, That an unpaid special commission, consisting of three persons to be appointed by the governor, is hereby established to make a thorough investigation into the practice and procedure followed throughout the commonwealth in the apprehension, conviction and punishment of gangs, gangsters, racketeers and other persistent violators of the law, persons engaged in the operation of pools and lotteries, slot machines, clubs dispensing intoxicating liquors, so-called speakeasies, and other illegal practices, and persons who have been frequently and repeatedly brought before the courts of the commonwealth and not punished, in order to determine the causes for failure to punish; to place the responsibility for the existing evils in these connections; to devise measures for improving the law in regard to such matters; to improve the respect for law and to eradicate the existing evils in the present system of criminal practice and procedure; and to consider other related matters contained in the message of the governor dated July thirteenth of the current year, printed as current house document numbered fifteen hundred and seventy-eight. Said commission may hold hearings, shall be provided with quarters in the state house or elsewhere, may require by summons the attendance and

testimony of witnesses, may administer oaths, may require the production of books and papers pertaining to any matter under investigation, and may expend for clerical and other assistance and expenses such sums, subject to appropriation, not exceeding, in the aggregate ten thousand dollars, as may be approved by the governor and council. The commission shall report to the general court its findings and its recommendations, together with drafts of legislation necessary to carry such recommendations into effect, by filing the same with the clerk of the senate on or before the first Wednesday in December of the current year, and at the same time shall file a copy thereof with the governor.

In pursuance of said resolve the Governor appointed to the Commission Frank L. Simpson, Esq., Gen. Charles H. Cole, and Daniel J. Lyne, Esq. The Commission qualified and organized on August 1, 1933, choosing Frank L. Simpson, Esq., as chairman. Subsequently the Commission engaged the services of James J. Ronan, Esq., as counsel, James J. Caffrey, Esq., as associate counsel, and Morris Ploscowe as statistician.

The fact that the Commission was directed to report on or before the first Wednesday of December in this year, and that the sum of $10,000 was appropriated for the expenses of the Commission, indicate that the scope of the investigations was not intended to be as broad as is suggested by a first impression of the language of the resolve. This led to a careful consideration of the terms of the resolve and the formulation of a policy by the Commission.

It is apparent, from a consideration of the element of time and of the amount appropriated for the Commission's use, that it was not the purpose of the Legislature to direct the Commission to make such investigation and to endeavor to procure such evidence as to lead to the fixing of personal responsibilities or to prosecutions against individuals; nor was it the purpose to authorize a general crime survey of the scope and extent which such surveys are commonly understood to involve.

A brief recital of the time consumed in and expenses of crime surveys in other parts of the country amply demonstrate that no such purpose could have been contemplated.

The Missouri crime survey was begun on April 1, 1925, and was not completed until early in 1926, at a cost of approximately $75,000. It was confined to a study of the administration of the criminal law and to making recommendations for the betterment of such administration, and the Commission chose one county in each of the judicial circuits of the State for the purposes of its survey.

The Illinois crime survey began in February, 1926, and was not concluded until 1929, at a cost of approximately $100,000.

The New York Crime Commission began its investigations in 1926. The Commission was established to last for one year, but its activities were extended from year to year until 1930. The original appropriation was $100,000, and $50,000 was appropriated annually for the next four years. The total expenses of the Commission were slightly over $300,000.

The Cleveland crime survey was begun in February, 1921, and concluded in June of that year, at a cost of approximately $38,000. The survey was confined to the city of Cleveland, and consisted, generally speaking, of a survey of matters of administration of the criminal law, of much the same character as that which was authorized by chapter 54 of the Resolves of 1933.

The language of the resolve indicates that the mandate to this Commission was merely to investigate into the *practice and procedure* followed in the administration of the criminal law and to determine whether that practice and procedure, using these terms in the broadest sense, were adequate to present-day conditions; and if not, the Commission was directed to undertake to recommend measures to improve such procedure and to increase respect for law.

It was as a result of the foregoing considerations that the Commission determined the scope of its investigations and the policy to be pursued in conducting them.

While the resolve seems to assume the existence of "gangs, gangsters, racketeers and other persistent violators of the law, persons engaged in the operation of pools and lotteries, slot machines, clubs dispensing intoxicating

liquors, so-called speakeasies, and other illegal practices," and while the existence of such criminals and crime agencies is a matter of more or less common knowledge, the Commission has felt obliged to satisfy itself as to the prevalence of the conditions referred to in the resolve. In doing so the Commission has been fully aware that it could not undertake to conduct investigations in all parts of the Commonwealth nor to such finality as to enable it to accumulate evidence to lay before public prosecuting agencies. In pursuance of this phase of its activities the Commission has conducted investigations in some of the larger cities, sufficiently scattered geographically to be representative, and in certain areas of the Commonwealth in which it was apparent at an early stage of our inquiry that menacing conditions existed. In making these investigations the Commission has felt at liberty to do so in such fashion and under such conditions as should most surely and expeditiously satisfy the Commission of the facts.

The Commission held a public hearing in the city of Boston, which was widely advertised, and which was held for the purpose of affording opportunity to any citizen, whether a public official or not, to give information and to make any suggestion or recommendation he might desire to make. This was the only public hearing held, because the Commission did not feel that public hearings as a general policy would be of any material assistance to it, either in determining the existence of crime conditions or of the incidents of practice and procedure in the administration of the criminal law; and this conviction was sustained by the experience had at the one hearing above referred to. Questionnaires were sent to responsible heads of the police departments, to the district attorneys, to the presiding judges of the district courts, to bar associations, and to other and representative citizens. Various conferences have been held with many persons who are familiar with crime conditions and the details of practice and procedure, and the apprehending, prosecuting and punishing of criminals. Where-

ever desired by those who have conferred with the Commission these conferences have been confidential. As hereinbefore stated, so far as concerns the existing conditions of criminal activity, especially that of the professional criminal, the Commission has acted upon the policy that its only concern was to satisfy itself as to those conditions. While the resolve provides that the Commission may summons "the attendance and testimony of witnesses, may administer oaths, may require the production of books and papers pertaining to any matter under investigation," it contains no provisions such as those contained in the Acts of 1919, chapter 223, establishing the Judicature Commission, and fixing a penalty for the failure of witnesses to appear and for the giving of false testimony. The absence of the coercive provisions above referred to has not, however, resulted in embarrassment or serious difficulty in obtaining sufficient evidence to warrant the Commission in making its findings, on the basis already indicated.

Specific findings will hereinafter be made with respect to the several aspects of the Commission's investigations. Speaking generally, the Commission is satisfied that, while conditions in this Commonwealth may not be as serious as they are currently reported to be in other parts of the country, particularly with reference to the larger and more centrally composed gangs of professional criminals, there clearly exist in various parts of the Commonwealth groups or gangs of professional criminals engaged in selling drugs, importing and selling liquor, operating gambling enterprises of various sorts, committing burglaries, robberies and even murder. Not only does this condition exist to a menacing extent, but the connection between the professional criminal and some political office holders constitutes a direct threat to the peace and security of the people of the Commonwealth.

A serious aspect of this threat is the apparent contempt of the organized gangster for the agencies of law enforcement. This attitude of contempt, we feel, is based not only upon the inadequacy of our present law

enforcement agencies, but upon the feeling, justified in far too many instances by actual experiences, that financial or political influence may be had for the protection of the illegal enterprise. This aspect of the crime threat cannot be too strongly emphasized, for the reason that unless efficient and drastic remedies are provided, developments here of criminal activity may well result in far more serious conditions than now exist. Already a determined rivalry between small gangs or their leaders in some cities, and ambitious plans in process of negotiation with leaders in other cities, promise more efficient and better organized criminal agencies and the possibility of gang warfare.

The Commission has not been concerned to determine the precise causes of the rise and development of what is commonly called the gangster or the racketeer; nor has it felt inclined to speculate what the activity of the criminal element will be upon the repeal of prohibition. There is a considerable body of intelligent opinion that the activities of this element will be turned more to the business racket and to kidnapping than has been true heretofore. There is also opinion that their activities will turn more to robbery, burglary, gambling, the house of ill fame, soliciting and the narcotic trade. Whatever may be the prospect, the fact is that there are organizations of professional criminals. There are leaders who have assembled about them groups engaged in criminal enterprises as a business and on a considerable scale. Efforts to curb these activities and to apprehend and punish the offenders have been notoriously ineffectual. The Commission has collected a list of crimes of a major sort committed within recent months and which remain unsolved. It would be no cause for serious criticism that now and again perpetrators of serious crimes were not detected and apprehended. The failure, however, is not the isolated case, — it is almost the rule.

The Commission has no desire to exaggerate the seriousness of the situation. It is satisfied, however, and feels that it is its duty to state, that there is a serious

breakdown of the law enforcement agencies of the Commonwealth in dealing with the situation, which differs from that of fifty, or even twenty-five years ago, not in degree alone but in kind. This Commission feels that the time has come when it will no longer suffice to attempt to patch up and repair the existing machinery. There is much of it that has outlived its usefulness, however useful it may have been when new. New machinery must be installed to meet the threat of organized professional criminalism, equipped as it is not only with money but with high-powered automobiles, machine guns, aeroplanes and speed boats.

Still speaking generally, and with little concern for scientific precision, the law enforcement agencies of the Commonwealth may be classified into three groups, as follows: the police, the prosecuting attorneys and the courts, including the jury, probation and bail systems.

The immediate contact of the criminal with the law is with the policeman. Upon the efficiency of the police, therefore, depends to a very large extent the security of the people against the depredations of the criminal. In this Commonwealth there are divers police agencies, among which are the State Police, the metropolitan police, and the numerous municipal police departments, not to mention the agents of the Motor Vehicle Registry and minor police agencies, such as game wardens and others. The personnel of these numerous departments exceeds 12,000 men, and the cost of their maintenance and operation is in excess of $16,000,000 a year. Each department is independent of every other. While the State Police under the present law have authority to investigate and to act with respect to criminal conditions anywhere in the Commonwealth, it is the tradition and policy of the State Police not to interfere within the areas of the local departments except at the request of the latter; and local jealousies and other influences preclude the invitation except in very unusual cases. The result has been that the State Police Department, with its personnel of 260 men and a detective bureau of 22 men, and costing ap-

proximately $1,900,000 a year, has generally engaged in investigation within the area of local departments only when requested so to do.

Many of the local departments are not only inefficient, and inadequately equipped, but are subjected to political control, and in some places apparently are permeated by graft.

In the city of Boston the continued existence of places in which gambling of various sorts takes place, the maintenance of slot machines, the operation of nigger pool games, and the uninterrupted running of elaborate speakeasies have been startling to this Commission. Equally disturbing has been the extent to which rum runners have been able to conduct a very large and lucrative business on Cape Cod and in cities in the various parts of the Commonwealth, with an accompaniment of murder and other serious crimes. It is instantly apparent that the law enforcement of our present police systems is decentralized and established upon a basis that affords the greatest facility for corrupt influence of every sort.

We would not be understood as saying or believing that all police officers or officials, or even that a majority of them, are dishonest or susceptible to corrupt influences. We believe the contrary to be true. We do, however, believe that there is an amount of corrupt influence actually being exercised to make our present police systems entirely inadequate. It has been made patent to this Commission that enough dishonesty exists to slow down and even to stall the machine, if our present set-up can be dignified by such a term. And even if a major volume of dishonesty of one sort or another did not exist, decentralization of police agencies, with the varying degrees of efficiency or inefficiency that must result from lack of adequate financial equipment and technical training of personnel, seems to be the antithesis of the organization that ought to be had in this day to cope with the well-financed and capable management of professional criminalism. Police units established on the basis of the horse and the individual messenger cannot be said

to be adapted to the means of transportation and communication which are available today to both the police and the criminal.

The present system of organization of our District Courts, of which there are 72 in the Commonwealth, exclusive of the Municipal Court of the City of Boston, presided over from time to time by 230 judges and special justices, many of the latter of whom also are from time to time engaged in the trial of cases, in the opinion of this Commission and upon the facts disclosed to it, is inadequate, under present-day conditions, and, moreover, is a system which in its actual operation sometimes itself contributes to disrespect for law and the courts. Having in mind our experience with full-time judges receiving adequate compensation, in our Superior and Supreme Judicial Courts, it seems to the Commission that the time has come when serious consideration must be given to the question whether we should longer endure the experiences which we have had with the functioning of some of our inferior courts. So far as the Commission can discover there has been no complaint or criticism of the fashion in which the judges of the Superior or Supreme Judicial Courts have conducted themselves, certainly so far as concerns what may be termed the motive of their functioning. So much cannot be said of all of the District Courts. There is a widespread belief that in some instances favored attorneys have been able to obtain disposition of cases against the public interest in these courts. The record of the disposition of cases of offenders repeatedly brought before these courts can in the nature of things result only in disrespect for law and in embarrassing the conduct of the warfare on gangdom. The postponement and continuance of cases by special justices who are paid a per diem fee for a full day, whether they sit one hour or five hours in a day, constitute a condition of more serious import than a waste of public money. It seems to us that the practice of the criminal law by men who at times preside over the criminal courts can no longer be tolerated.

The conditions under which district attorneys function in some of the districts of the Commonwealth, because of the pressure of far more cases than they can try, constitute a serious obstacle to the expeditious, efficient and dignified administration of the criminal law. Complaint has been frequently voiced at the fashion in which district attorneys dispose of cases appealed from the lower courts and those initiated before the grand jury. It is a well-known fact that in our larger districts "bargain days" are held, and indeed must be held if the criminal lists are not to become hopelessly congested. Appeals are frequently taken from lower courts for no other purpose than to bargain with the district attorney over the question of sentence. Parties and their counsel know full well that the district attorney will be forced to bargain. The district attorneys' offices are inadequately equipped to undertake investigation of crimes, in the first instance, and there has been no adequate supervision of these offices or co-ordination of them under centralized control. Here, as in the police departments, organized professional criminalism is confronted by isolated units, operating independently of one another, and organized upon a haphazard basis too frequently dictated by political considerations and ambitions.

Serious question has been raised from time to time, and it seems that the time has come when it should be answered, whether the expensive and dilatory process of putting cases before grand juries ought longer to be continued. The evidence is overwhelming that grand juries generally indict when the district attorney wants them to indict, and fail to indict if the district attorney advises against it.

Generally speaking, it is a waste of money, and a cause of delay in the disposition of complaints, to present all felony cases to the grand jury, and no valid reason can be perceived why the district attorney should not in most of these cases file an information or present his evidence to a judge of a District Court or of the Superior Court on application for a warrant. If objection be raised

that the Superior Court is now too busy, the answer is that the court can be engaged in no more important business in these days than in administering the criminal law. If it be thought that too much power would be given to district attorneys if they were permitted to file an information without submission of evidence to a grand jury, it would be easy to adopt safeguards against possible abuse of power and measures of responsible supervision such as will be recommended herein. The grand jury might be preserved for use in those cases to which it is suited by providing for the summoning of a grand jury by any judge of the Superior Court.

There seems to be even less reason for the intervention of the grand jury in cases in which a District Court judge has held an accused person after a full hearing in open court on the question of probable cause. A finding of probable cause should operate as an information so as to put the accused to his trial in the Superior Court. Not only would time and money be saved, but opportunity for "fixing" the case, a not infrequent incident of present practice, would at least be diminished.

Events of recent months have centered attention upon palpable defects in the jury system. These events have caused some undoubtedly sincere and earnest people to advocate that the system be abolished, and that trials by judges or boards be substituted. So far as concerns the administration of the criminal law, the Commission does not sympathize with this suggestion. It may be conceded that the jury system at its best is not perfect, but if properly administered, its defects are those of fallible human nature. Neither has the Commission sympathy with the suggestion for the establishment of intelligence or property tests. The theory of the system is that judgments of fact should be rendered "by the country." If that could be had, free from corrupt influences, we feel that justice would generally be done. The difficulty as we see it lies in the present methods of selecting the jury panels. Instead of a selection by chance from the eligible list of voters, too frequently

design enters into the preparation of the lists from which the panel is drawn. Some men get on to the jury panels and others keep off them because they want to be put on or kept off, as the case may be. Professional jurors, those who wish to serve in order to get the pay or for other motives, are found on our jury panels. Conversely, men who are qualified to serve succeed in keeping off the lists because of business engagements or interests and a lack of sufficient public spirit to contribute their share of sacrifice for the public good. If the selection of jury panels were made strictly by chance, and provision were made to prohibit too frequent service so as to spread the service over a greater number of eligible voters, much, we believe, would be accomplished; "fixing" of juries would be made more difficult and more dangerous; the professional juror would be eliminated; and the jurors selected would be more representative of the country. As matters stand now, the selection of the petit jury from the panel and the determining of qualifications within controlling statutes are judicial functions. We believe that the selection and the examination of the panel are also judicial functions. We therefore submit hereinafter recommendations which may seem at first impression somewhat drastic. They are based, however, upon the certain fact that present and past experience has been unsatisfactory and harmful. To place the mechanics of the system under control of the courts will undoubtedly improve the system and holds out the promise of eradication of the principal abuses.

The importance of probation in the administration of criminal justice is not generally appreciated. Massachusetts was the first community in the world to adopt a probation system, the use of probation as a corrective instrument having originated in Boston some fifty years ago. Some idea of the relative importance of probation in the handling of crime may be gained from a comparison of the following figures: The total prison population of the State was recently stated by the Commissioner of Corrections to be 2,735; the records of the Board of Pro-

bation show that in 1932 over 30,000 adults were placed on probation in Massachusetts. It is apparent that probation is an indispensable instrument in the handling of our crime problem, and that without it our prisons would be hopelessly inadequate.

Probation is not, however, a suitable correctional device for persistent criminals. Our investigation has disclosed that of the defendants placed on probation for the year 1932, 60 per cent had at least one previous conviction; one-third of these defendants with previous records had violated a prior probation and had been surrendered for the violation. Examining particular cases, we find in some of them the use of probation for persons having serious criminal records. We fully appreciate that every case should be considered as an individual matter, and that only the judge before whom a case is tried can adequately give it this consideration, but we nevertheless believe that probation should be used more sparingly in the cases of persons with previous criminal records than it has been by some judges in the past.

There has been some criticism made to us concerning the qualifications of certain probation officers. It is a difficult and delicate task to start afresh an individual who has been convicted of crime, and this task should be entrusted only to men and women who are qualified for it by training and experience. All probation officers are appointed by the judges of the courts in which they serve. Occasionally judges have appointed as probation officers relatives or friends who needed a job, and the necessity of suitable training and experience for the position has been disregarded. We believe that the selection of probation officers for each court by the court itself should be continued, for a judge should know and have confidence in the persons to whom he entrusts the supervision of his probationers. We also believe, however, that such appointments should be subject to confirmation by some central body, so that past mistakes in the selection of probation officers may not be repeated.

Recent events have brought into sharp outline defects

in the bail system as it now exists. Undoubtedly admission to bail must be fairly flexible and not surrounded with too stringent restrictions. It must be prompt and just, both to the accused and to the State. Inordinate delay or excessive bail could easily become an instrument of oppression and a reproach to the administration of the law. On the other hand, the system should not be so lax as to afford no security to the State and to amount to little more than a license fee for further criminal activity.

We have not been able to make a complete survey in all parts of the Commonwealth, but from the investigations we have been able to make we have become satisfied that there are some defects in the bail system which ought promptly to be remedied. These will more fully be discussed later in this report where recommendations are made of legislation to remedy such defects.

It goes without argument that some action ought to be had to prevent the acceptance on bail bonds of worthless sureties, whether individuals or corporations. It is equally obvious that, so far as possible, when real estate is the property offered as security, as so commonly is the case, such examination should be made as to afford better assurance than we now have that there is security equal to the amount of the bail and that that security shall not be impaired. The principal difficulty with the bail system as we see it is not one inherent in the system itself, but lies in a laxity in the working of it. Various efforts have been made in the past to improve the system, some of which have had very beneficial results; but there is more which ought to be done. Recommendations looking to further improvements in the bail system will be made later in this report.

PART II.

SUMMARY OF CERTAIN INVESTIGATIONS AND STUDIES.

We submit herein summaries of some of our investigations and studies.

Persistent Offenders.

In his message to the Legislature, the Governor comments on the criminal records of twenty persistent offenders. His Excellency indicates briefly that these individuals managed to escape the toils of the law on many serious criminal charges. The examination of the records of professional criminals is a fair means of determining the efficiency of the machinery of criminal justice. Through their frequent contacts with police, prosecutors, courts and probation agents, persistent offenders learn the weaknesses in the machinery of law enforcement. They may be expected to "know the ropes" and to take advantage of the loopholes which exist. If it can be determined from their records by what methods such criminals escape, then an examination of these methods should disclose the weaknesses in our criminal law enforcement.

Such a study is especially important because the crime from which this Commonwealth has most to fear is the work of individuals who for one reason or another have chosen crime as a career. If our law enforcement machinery is ineffective in catching, convicting and confining the professional criminal, the people of the Commonwealth are not receiving the protection of life and property they have a right to expect. Any immunity of habitual criminals is the more serious because of the influence on the juvenile offenders from whom their ranks are usually recruited.

The following report is a study of the records of eighty persistent offenders to determine how the law enforcement machinery has dealt with them. With few exceptions, every one of these offenders came before the courts during the year September, 1932, to September, 1933. Of these eighty persistent offenders, twenty are the so-called "public enemies" referred to in the Governor's message. The facts recorded are from the records kept by the Massachusetts Board of Probation and from the Bureau of Identification of the Department of Public Safety.

These eighty offenders have appeared before the courts from nine to one hundred and three times each, for all kinds of offences. Only the more serious charges against them will be considered in this analysis. They have been charged with a total of 912 offences, as follows:

Homicide [1]	14
Assault and battery	103
Driving under the influence [2]	31
Larceny	324
Robbery	59
Breaking and entering	154
Larceny of auto [3]	84
Forgery [4]	12
Receiving stolen goods	18
Carrying concealed weapons	16
Violations of narcotic laws	16
Violations of liquor laws	71
Miscellaneous offences [5]	10

[1] Includes murder, manslaughter, assaults with intent to kill.
[2] Includes operating to endanger.
[3] Includes misappropriation of auto, using auto without authority, etc.
[4] Includes uttering forged instruments.
[5] Includes rape, abuse of female child, kidnapping, unnatural act.

These 912 charges were finally disposed of as follows:

	Number.	Per Cent.	
Dismissed	118	12.9	
Nol pros	27	3.0	
No bill	29	3.2	
Acquittal	113	12.4	
On file	136	14.9	
Suspended sentence	51	5.6	
Probation	130	14.2	
Prison sentence	228	24.9	30.8
Fine	54	5.9	
No record and pending	26	3.0	
	912	100.00	

Sentences of one kind or another were imposed on 463 charges, as follows:

	Number.	Per Cent.
Suspended	51	11.0
Probation	130	28.1
Prison	228	49.2
Long term	61	13.2
Reformatory	18	3.8
Short term or juvenile	149	32.2
Fine	54	11.7
Total sentences	463	100.0

The outstanding fact which is evident from the first of the above two tables is that in only 30.8 per cent of all the charges was there any sentence of fine or imprisonment which actually was carried out. If we may generalize from these eighty cases, a persistent offender has almost seven chances in ten of escaping any effective penalty when charged with a serious crime.

It is not because these criminals are tried and found "not guilty" that they so frequently escape any effective treatment. Acquittals after trial represent only 12.4 per cent of the dispositions. In a slightly larger percentage,

12.9 per cent, the defendants were charged with crime in the District Courts and the cases against them dismissed without any court action being taken. In another 6.2 per cent the charges were either "no billed" or "nol prossed" when they were carried to the Superior Court. Of all the charges, 14.9 per cent were placed on file. It is impossible to say from the records whether these cases were placed on file before or after conviction. A considerable number of them must have been placed on file after conviction, which would indicate that despite a finding of guilt (and sometimes two findings of guilt) the court did not believe that any action should be taken for the protection of society from such offenders.

Of all the dispositions, 19.8 per cent were suspended sentences and probations, in which no committment followed. If all the dispositions in which we are sure that a conviction was obtained be added up, we find that probations and suspended sentences represent 39.1 per cent of the total. In other words, in these serious charges there appears to be about one chance in two that the defendant will not be convicted at all. Even if he is convicted, there are about two chances in five of his escaping a fine or imprisonment. There appear, therefore, to be only about three chances in ten that a defendant charged with serious crime will be fined or imprisoned.

Even if the persistent criminal is sentenced to imprisonment, the probability seems to be that he will receive a sentence of less than one year. Of the 228 prison sentences inflicted for these 912 charges, there were only 61 sentences of one year or more to the State Prison, House of Correction, etc. There were 18 sentences to the Massachusetts Reformatory for indefinite periods of not more than five years. There were 149 sentences for short terms of less than one year or to juvenile institutions. It therefore appears that short sentences were the rule rather than the exception, when one of these offenders was sentenced to imprisonment.

The conditions surrounding the various dispositions by which these criminals have escaped punishment will now be examined in greater detail. It has been noted that

12.4 per cent of the prosecutions for serious crimes against these offenders were dismissed. The great bulk of the dismissals, all but two, were in the District Courts. It is possible that the character of police activity in the early stages of the prosecution was in part responsible for the large percentage of dismissals in the lower courts. This Commission has learned that a large number of prosecutions are dismissed in the District Courts because the police cannot or do not arrest the accused after a warrant is issued. Whenever a warrant is returned to the clerk of court "without service," there is generally no statement as to the efforts made by the police officer to serve it. A rubber stamp announcing that "diligent search" had been made is the end of the matter. Furthermore, warrants of arrest are not infrequently "lost." Another possible explanation of this large percentage of dismissals may be found in certain features of the organization and procedure of District Courts. The district attorney almost never appears in these courts, and the prosecution of serious cases in their preliminary stages is therefore left in the hands of police officers, who often have not the training required to present the cases properly. Each District Court is independent of every other, and there is no effective supervision over them. Most of these courts keep very meager records, so that it is impossible to tell why a particular case was dismissed. There is seldom a transcript of the testimony in the District Court. The record of a case usually consists of the name of the defendant, the offence charged, and a scribbled notation indicating that the defendant was discharged, found guilty or bound over. Often not even the name of the judge appears on the record, and often we cannot tell whether or not the accused was represented by an attorney. Some special justices and clerks practice law in their own courts. District Court judges and police officers are under serious handicaps in performing their work under such conditions, and it would not be surprising if dismissals in District Courts were in consequence more numerous than they should be.

Another reason for the inefficiency of the machinery of

criminal justice in dealing with persistent offenders lies in the working of the appeal system in criminal cases. Where an accused is tried in a District Court for any offence, he may, if convicted, appeal to the Superior Court and thereby get another trial. This right of appeal has been established to assure to the defendant his constitutional right to trial by jury for any and all offences. But, as has been indicated in the first report of the Judicial Council, defendants in criminal cases abuse this right of appeal.

The report states:

> Finding the Superior Court unable to try all the cases on its docket, defendants in criminal cases in District Courts have taken appeals to the Superior Court, not to secure a trial by jury, but to take advantage of the situation in the Superior Court caused by the congestion of its docket. Of necessity some disposition has to be made of the cases which the court cannot try. They may be placed on file, a fine may be substituted for imprisonment, they may be nol prossed, or some other disposition of them may be made by the district attorney. The appeals . . . are taken by defendants in the hope that their cases may be among those which are disposed of without trial, and that in this way a more beneficial result will be obtained than that meted out in the court below. (First Report, November, 1925, p. 13.)

Our study of the appeals taken by persistent offenders has demonstrated that if an appeal is taken from a sentence of the District Court, the result of the appeal will in the large majority of cases be favorable to the defendant. Of the 80 persistent offenders studied, 53 appealed one or more convictions. There were in all a total of 157 appeals; there is no record of final action on 14 of them. For the 143 appeals on which the records are complete, the dispositions were as given in the attached tables. In only 14.6 per cent was the original sentence of the District Court sustained, and in only 2.1 per cent was the penalty of the lower court increased, despite the fact that the Superior Court upheld the original conviction in about 79.6 per cent of the cases. Except for the 16.7 per cent of the cases in which the original sentence was sustained or increased, the dispo-

sitions in the Superior Court were more favorable to the defendant than the original sentence in the lower court. Of the cases, 20.9 per cent fell in the Superior Court through acquittal, dismissal or nol pros. Of the appeals, 21.6 per cent resulted in a smaller sentence of imprisonment or a change from imprisonment to a fine; 18.2 per cent of the appeals resulted in the granting of probation; 23 per cent of the appeals were placed on file either before or after conviction.

The favorable treatment achieved through appeal is strikingly brought out by some of the records. We have identified the cases in the attached tables by numbers. No. 54 has been brought before the Superior and District Courts approximately fifty-nine times for all kinds of offences. On his last four larceny charges, one fine of $200 was appealed and nol prossed in the Superior Court; two sentences of six months and one year, respectively, were, on appeal, placed on file in the Superior Court; the fourth sentence, one year, was eliminated, on appeal, by a finding of not guilty in the Superior Court thirteen months later. Sixteen sentences for liquor offences were also appealed by this persistent offender. On the first two, sentences of $100 and three months' imprisonment were reduced on appeal to a $150 fine. Twenty-four months' imprisonment and $500 in fines on seven liquor charges became, on appeal, a $50 fine and six months' imprisonment. Eighteen months' imprisonment and $100 in fines on seven more liquor charges became, on appeal, a $100 fine and a seven months' imprisonment. This man saved himself four years and two months' imprisonment and $1,500 simply by taking appeals from his lower court sentences.

Another case in point is that of No. 11. This persistent offender took eight appeals on the serious charges under consideration. One sentence of four months' imprisonment for assault and battery was appealed, and the appeal resulted in his being placed on probation. One charge of larceny from the person resulted in a sentence of two years' imprisonment, which, on appeal, was re-

duced to fifteen months. Another charge of larceny brought a six months' sentence to the House of Correction, which was placed on file on appeal. Four liquor convictions were also appealed; two sentences of two months each were sustained; on the third appeal the accused was found not guilty, after a $200 fine and two months' imprisonment had been imposed in the lower court; on the fourth appeal a lower court sentence of three months was placed on file in the Superior Court. This persistent offender saved himself twenty-four months of imprisonment and $200 in fines by appealing.

A third case in point is that of No. 4, who has a record of fifty-nine appearances before the courts for all kinds of offences. This persistent offender took eight appeals from convictions for the offences under consideration. One sentence of six months for breaking and entering was, on appeal, placed on file. Another sentence of six months for larceny was appealed, and probation was obtained in the Superior Court. A two months' sentence for unlawful appropriation of an automobile, on appeal, became a mere filing of the case. An appeal from a sentence of six months for carrying a revolver resulted in the case being placed on file. A one year House of Correction sentence for attempted larceny of an automobile was wiped out by a not guilty verdict in the Superior Court. An appeal from a five months' sentence to the House of Correction for assault on his wife resulted in the defendant's probation. Two sentences for violation of liquor laws, one of $50 and the other of $100, and three months in the House of Correction were the only sentences which were sustained on appeal. His original convictions would have given him $150 in fines and forty months' imprisonment. His actual sentences on his appeals were three months and $150 in fines. He thereby saved himself thirty-seven months for his outside-prison activities.

It should be emphasized that these successes on appeal were obtained on rather serious charges and by persist-

ent offenders. The appeal record of these delinquents on minor offences has not been considered in this study. If time permits, a separate memorandum will be devoted to a study of persistent misdemeanants, and the question of appeals in minor offences will be considered there.

The above cases are, it is true, some of the most striking instances which indicate the abuse of the appeal system by persistent offenders. But similar instances of more favorable treatment on appeal than in the lower courts occur in practically every one of the records. It is evident from this examination that this abuse of the right of appeal in criminal cases is not only congesting the Superior Court, but it is also tending to reduce the usefulness of our District Courts. The efforts of the District Courts to repress crime is to a large extent frustrated by the practice of persistent offenders of appealing from District Court sentences with the assurance that the chances of obtaining better treatment or escaping entirely on appeal are largely in their favor.

One does not get the impression from further study that the leniency to persistent offenders on appeal is the result of any too great severity on the part of the District Courts in imposing sentences. Where a defendant has received more favorable treatment by having his conviction placed on file, or when he receives probation or a modification of his sentence, this has probably resulted from a bargain made with the district attorney and the judge. The congestion of cases to be tried makes it necessary that such bargains be entered into as a means of procuring pleas of guilty and thus disposing of cases. Where the persistent offender has been acquitted on his appeal, it is quite possible that in the delay between the first trial and the second the witnesses in the first trial have disappeared, been tampered with, or suffered lapses of memory.

A survey of criminal procedure must recognize the appeal system as one of the means whereby criminals escape the penalties for their crimes. Some method

ought to be found to limit the number of appeals and to make sure that when an appeal is taken there shall be some merit in the appellant's case — that the appeal is not taken merely in the hope that lapse of time between the first and the second trial and congestion of the docket in the Superior Court will procure for the appellant more favorable treatment than he is entitled to. In this connection the English method of demanding rather high costs from an appellant in case he loses his appeal has been suggested. The creation of a special appellate body to handle appeals in criminal cases from the District Courts has been urged. It has also been suggested that the accused be compelled at the beginning of the case to elect either trial by jury, in which event his case would go directly to the Superior Court, or trial by the District Court. These various suggestions are considered in another part of our report, where our opinions concerning them will be found.

Another means whereby persistent offenders are escaping the penalties for their crimes is the too free use of probation and the suspended sentence as methods of treatment. Of the 463 cases in which a conviction was obtained, the persistent offender received a suspended sentence or probation in 181 cases, or in 39.1 per cent of the cases. What was intended to be a special type of disposition for first offenders and occasional criminals seems to have become a method of disposition for habitual criminals.

The idea back of probation is that the occasional criminal should, if possible, be spared the contaminating influences of institutional treatment. It is believed that individuals who are not confirmed criminals may be adequately restrained from committing other offences by being given another chance outside prison walls. Probation means that instead of being sent to an institution, the occasional criminal is given his freedom under the supervision of a probation officer. It was never intended as a mode of escape for confirmed criminals. One of the striking things which emerges from our study of the

records of persistent offenders is that they are, time and again, placed on probation when their records are such as to imperatively demand institutional treatment.

The probation record of No. 7 illustrates this point. His first probation was on a gambling charge, after a prior larceny charge had been placed on file by the juvenile court, after a larceny charge and an assault and battery charge had been dismissed, and after a $5 fine had been paid for lewd cohabitation. On his next larceny charge he was again convicted and again put on probation. His next charge was of assault and battery, which was filed. He was charged with violating the terms of his probation, but the only penalty was that his probation was extended. Two months later he was charged with breaking and entering, and was found not guilty. Three months later he was again before the same court charged with violation of probation; probation was again extended. Nine days later he was brought before the same court charged with larceny; he was again put on probation. Seven months later he received probation from the Superior Court on an assault and battery charge. Two months later he was charged with larceny and with breaking a showcase; he was again put on probation by the Superior Court. This persistent offender was put on probation six times; twice he was brought in for violation of his probation, and in both instances the only penalty was that his probation was extended for a further period.

Another record in point is that of No. 14. This man was charged with larceny on six different occasions. On the first occasion the court permitted the complaint to be dismissed because he gave back what he had stolen. In the other five cases he was put on probation four times and sentence was suspended once. These six charges of larceny occurred within a period of three and one-half years.

No. 15, on two breaking and entering charges, was placed on probation. On a third charge he was committed as a juvenile to the Lyman School. A charge of

larceny brought him a suspended sentence. Despite these offences, on his first adult charge for breaking and entering he was again put on probation.

Another case in point is that of No. 10, who was placed on probation on a larceny charge, although he had previously been committed to the House of Correction on a charge of breaking and entering, and although the offence for which he was found guilty was committed while he was on parole for a second time from the Massachusetts Reformatory.

No. 8 has been successful in escaping penalties for his many larcenies largely through the fact that when he was caught and convicted the sentences against him were suspended. In his first six larceny cases he was found guilty in five; he received suspended sentences in four, and in the fifth he was sentenced to two months in the House of Correction. On his seventh larceny charge, despite this prior record, he was placed on probation by the Superior Court.

These cases seem to be instances of the abuse of probation, and we have endeavored to discover the causes of this seeming abuse. Certain of the causes have already been considered in this report, mainly the abuse by persistent offenders of the appeal system, and the congestion of work in the Superior Court. We think that some explanation may also be found in the administration of the probation system itself.

There are two individuals who are of greatest importance in determining whether or not a man should be put upon probation, — one is the judge, the other is the probation officer.

The power to sentence a man who has committed a crime is concentrated in the hands of the judge. He may impose imprisonment and fix sentence between the minimum and the maximum limits fixed by the law. He may send a man to the Reformatory to remain an indefinite period, not over five years. He may suspend sentence. He may put the defendant on probation. What sentence is imposed in a particular case is entirely

within the discretion of the judge. It is conceivable that some judges are not fully aware of their responsibility in connection with the enforcement of the criminal law, and in consequence are too lenient in their treatment of persistent offenders. It is not sufficiently well understood that a lawyer who may have spent all his life in civil business does not by the mere fact of appointment as judge acquire overnight a complete insight into penological problems. This comes only with study and experience.

Assuming that the judge is fully aware of his responsibilities, he is dependent upon his probation officer for information on the basis of which the proper disposition may be made. The judge is required by law to obtain all available information from his probation officer concerning the prior record of any defendant when the offence charged is punishable by sentence of more than one year. The law places upon the probation officer the duty of obtaining information as to the criminal record of a convicted defendant when requested by the court. Some information as to the way probation officers are performing their duties may be obtained from a perusal of the annexed table, showing the frequency with which the Board of Probation has been consulted by the probation officers of different courts. The Board of Probation maintains a record system which provides information on every delinquent who has passed through the Massachusetts courts. It would be expected that probation officers of all the courts would make the records of the Board of Probation the starting point for their inquiries concerning the offenders who come before their courts. It is astonishing to learn from this table that the probation officers of some courts practically ignore the Board of Probation.

Consultations of Board of Probation with Court Probation Officers.

	Number of Cases before the Court, Year ending September, 1932.	Number of Times the Court consulted Probation Board during Year.
Boston	38,789	31,832
Brighton	2,100	1,666
Charlestown	5,616	4,695
Chelsea	4,333	2,009
Dorchester	6,325[1]	967[1]
East Boston	6,503[1]	640[1]
Roxbury	12,980[1]	6,192[1]
South Boston	6,912[1]	821[1]
West Roxbury	4,543	2,050
Brookline	1,900	2,062
Somerville	1,988	481
Lawrence	2,838	5
Fall River	3,134	14
Lowell	4,388	295
Brockton	3,414	25
Springfield	8,824	1,195
Holyoke	1,252	21
Fitchburg	1,083	86

[1] For explanation of these figures see Report, Commissioner of Corrections, 1932, pp. 100, 106.

It is possible that abuses of probation in the case of persistent offenders may be entirely due to the fact that some probation officers are not fitted for their work. No standards are laid down for the appointment of probation officers. A judge in any court may appoint as probation officer any one he pleases. There are, in consequence, extraordinary variations in education, training, experience and aptitude as between probation officers attached to different courts, and even as between those attached to the same court. There are unquestionably among Massachusetts probation officers many individuals who are admirably qualified for their work; but there are also many who are not so qualified. And even though a man may be utterly unequipped for his job

when appointed probation officer, and even though he does not learn anything on the job, there is no one who can do anything about it but the judge who appointed him.

The Board of Probation serves the entire State and should have some control over Massachusetts probation officers; it has none in fact. It cannot compel a probation officer to use its records. It cannot prevent a judge from appointing an unqualified individual as probation officer. The result is that each individual court goes its own way in its probation work. The value of the probation work done in any court will largely depend upon the degree of the judge's interest and understanding of probation, and upon the individuals whom the judge appoints as probation officers. The Board of Probation ought to have the power to enforce minimum standards of probation efficiency throughout the State, and it should have some voice in the appointment and dismissal of probation officers.

Another inefficiency in the administration of criminal justice disclosed by the records of persistent offenders is the too frequent use of the short prison sentence in the few cases in which a prison sentence is imposed. Of a total of 228 sentences to imprisonment, to the Reformatory, State Prison, House of Correction, or juvenile institutions, only 61 were sentences to imprisonment for one year or over in the State Prison or the House of Correction. Eighteen sentences were to the Reformatory for an indefinite period of not more than five years (the actual time served is usually very much less). It would appear that the persistent offender, when he has the misfortune to be caught, convicted and sentenced to imprisonment, usually receives a short sentence of less than one year. These short sentences apparently had no deterrent effect on these offenders, but were only temporary interruptions of fruitful criminal activity.

Two cases may be cited as examples of the use of the short penalty as a method of repression against these persistent offenders. The first is that of No. 21 who has to his credit nine larceny charges, one breaking and en-

tering charge, two drug charges, and a number of charges for drunkenness and other minor offences. He was found guilty on his larceny charges every one of the nine times. We have no record of the first sentence. One sentence of four months in the lower court was appealed; on the appeal the case was placed on file. On his fifth larceny charge he received probation. On his other six larceny convictions his sentences were as follows: one month, three months, six months, six months, one month, three months. When found guilty of breaking and entering, he was put on probation by the Superior Court. When his probation was violated, he received a five months' jail sentence. It is evident from this record that short terms of imprisonment were ineffective as restraints upon the criminal activity of this offender.

Another case in point is that of No. 31, who was charged with larceny nine times; he was also charged with breaking and entering, assault with intent to kill, assault and battery, and an unnatural act. On his nine larceny charges he received sentences as follows: four months; ten months; four months; six months; three months; six months on each of two counts; he was discharged once; he received a suspended sentence on his sixth larceny charge; one case was placed on file in the Superior Court on appeal. He received nine months in the House of Correction on each of two counts for breaking and entering. Here, again, it is doubtful whether, in view of the many larceny charges, some more effective mode of treatment of this persistent offender was not required.

Although only 8 of the 80 persistent offenders considered in this study have escaped any prison sentence at all during their career, only 34 of the 80 have had one or more than one prison sentence of a year or over. The most serious prison sentence for 13 others was to the Reformatory, and the other 24 have only been sentenced to imprisonment for one or more terms of less than one year.

In view of the fact that the sentences which have been imposed on these persistent offenders have apparently

not restrained their criminal activity, the problem is presented of providing some effectual method of treatment. Most criminal codes contain a provision which gives the judge power to increase the penalty where the delinquent is a recidivist, that is, where he has been convicted of crimes more than once. There is no such general provision in the Massachusetts law. However, there are some provisions of this type for specific offences. Where a defendant is convicted as a second offender for breaking and entering in the night time, the minimum penalty is not less than five years imprisonment (chapter 266, section 15); there is no minimum penalty prescribed for the first offence. Where property is stolen from a common carrier, the penalty for a first offence is not less than six months; for a subsequent offence the minimum is not less than eighteen months. Where a man is convicted upon two different indictments for larceny, the General Laws provide that he shall be deemed a common and notorious thief, and shall be punished by imprisonment in State Prison for not more than twenty years or in jail for not more than two and one-half years (chapter 266, section 40); one convicted of three distinct larceny charges at the same sitting of the court may also be adjudged a common and notorious thief and sentenced to the above penalties. There are similar provisions for receivers of stolen goods (chapter 266, section 62) and utterers of forged instruments (chapter 267, section 19).

It is submitted that a general provision as to serious recidivism should be made part of the Massachusetts criminal law. It might be well to consider, also, whether minimum penalties should not be provided for habitual criminals. Merely increasing the maximum is no guarantee that an effective penalty will be imposed.

There is one provision of existing Massachusetts law which might under certain circumstances be applicable to these persistent offenders. This is the provision of the General Laws that whoever has been sentenced to prison in this or any other State for two terms of not less than three years each shall upon conviction of a felony be considered a habitual criminal, and shall be punished by

imprisonment for the maximum term provided by law for the felony with which he is charged. But in not one of our eighty records does this provision of the law appear to have been invoked. We have seen that the usual sentence to imprisonment, where a persistent offender was unfortunate enough to receive such treatment, was a short term of one year or under.

The penalties of our criminal law have been conceived in terms of punishment for a single offence. But there is a distinct social interest in preventing the criminal activity of persistent offenders, apart from any idea of punishment. Some measure of social protection must be provided against criminals who are sure to continue preying on society as soon as they are released from institutions. The need of such protection is defined not so much by the gravity of the last single offence, but rather by the social danger which this sort of offender presents. It is necessary to provide measures of detention for long periods for persistent offenders, based not upon their punishment but upon their danger to society. This idea has been completely developed in the new European codes and projects of criminal law, and has not been unrecognized by the English and American law. At some time a study should be made of these new methods for the treatment of persistent offenders.

Offences — Cases 1 to 40.

Case Number.	Homicide.	Assault and Battery.	Driving under Influence.[1]	Larceny.	Robbery.	Breaking and Entering.	Larceny of Auto.	Forgery.	Dangerous Weapon.	Narcotic Offences.	Receiving Stolen Goods.
1	–	–	–	3	–	2	–	1	–	–	–
2	–	–	1	–	–	–	1	–	–	–	–
3	–	–	–	8	–	–	–	1	–	–	–
4	–	1	1	3	1	5	6	–	2	–	–
5	–	1	–	6	2	1	–	–	1	3	–
6	1	6	5	2	–	4	2	–	–	–	1
7	–	5	–	7	–	3	–	–	2	–	1
8	–	–	–	10	–	–	–	–	–	–	–
9	1	1	1	5	2	7	–	–	–	–	–
10	–	–	–	4	1	4	–	–	–	–	–
11	–	6	–	5	2	1	1	–	–	–	–
12	–	3	–	8	3	1	–	–	–	2	–
13	–	–	–	11	–	2	2	–	–	–	–
14	–	–	–	5	–	–	–	1	–	–	–
15	–	–	–	1	1	5	–	–	–	–	–

[1] Includes operating to endanger.

Offences — Cases 1 to 40 — Concluded.

Case Number.	Homicide.	Assault and Battery.	Driving under Influence.[1]	Larceny.	Robbery.	Breaking and Entering.	Larceny of Auto.	Forgery.	Dangerous Weapon.	Narcotic Offences.	Receiving Stolen Goods.
16	–	–	–	2	–	1	3	–	–	–	–
17	–	–	–	6	1	3	2	–	–	–	1
18	–	–	1	3	2	4	1	–	–	–	–
19	–	1	–	7	–	2	–	1	–	–	–
20	–	5	1	–	2	3	–	–	–	–	1
21	–	–	–	9	–	1	–	–	–	2	–
22	2	–	–	10	–	2	–	–	1	–	–
23	–	–	3	6	–	–	1	1	–	–	–
24	–	1	1	3	–	4	2	–	–	–	–
25	–	–	2	6	3	2	2	–	–	–	1
26	1	2	–	2	1	1	3	1	–	–	–
27	–	–	–	2	–	–	–	–	–	5	–
28	–	–	–	–	–	1	1	–	–	–	–
29	1	1	–	4	1	4	–	–	–	–	–
30	–	2	2	2	–	2	5	–	–	–	–
31	1	–	–	9	–	1	–	–	–	–	–
32	–	–	2	14	–	–	2	–	–	–	–

33	–	–	–	2	–	3	2	–	–	–	–
34	1	2	–	2	1	–	–	–	–	–	–
35	–	1	–	1	2	–	1	–	–	–	–
36	–	–	–	6	1	–	1	–	–	2	–
37	–	2	–	6	1	–	2	–	–	–	–
38	–	–	–	–	–	1	2	–	–	–	–
39	–	3	1	3	–	2	1	–	–	–	–
40	–	2	–	9	–	3	7	–	–	–	1
Total	8	45	21	192	27	75	50	6	6	14	6

450 offences plus 36 miscellaneous and liquor-equal 486.

[1] Includes operating to endanger.

Offences — Cases 41 to 80.

Case Number.	Homicide.	Assault and Battery.	Driving under Influence.[1]	Larceny.	Robbery.	Breaking and Entering.	Larceny of Auto.	Forgery.	Dangerous Weapon.	Narcotic Offences.	Receiving Stolen Goods.
41	–	–	–	3	2	5	–	–	–	–	–
42	–	1	–	2	–	2	–	–	–	–	1
43	–	–	2	4	3	4	1	–	–	1	–
44	–	2	–	4	3	2	–	–	–	–	–
45	3	4	–	5	3	1	–	–	–	–	1
46	–	2	–	3	3	5	–	–	–	–	2
47	–	–	1	6	–	–	1	1	–	–	–
48	–	4	–	1	–	2	–	–	–	–	–
49	–	1	–	5	2	8	2	–	–	–	–
50	–	–	–	–	–	1	6	–	–	–	–
51	–	6	–	2	3	4	–	–	–	–	–
52	2	–	–	13	–	3	–	–	1	–	–
53	–	1	–	9	–	1	3	–	–	–	2
54	–	3	–	7	1	–	–	–	2	–	–
55	–	5	–	1	–	3	–	–	1	–	–
56	–	4	–	7	1	2	–	–	–	–	–
57	–	2	–	7	–	1	2	–	–	–	–
58	–	6	1	8	2	1	1	1	–	–	–
59	–	1	1	–	–	1	–	–	–	–	1

60	–	4	1	2	–	1	–	–	–	–	–
61	–	–	–	2	–	4	2	–	–	–	–
62	–	–	–	–	–	6	–	–	–	–	–
63	–	2	–	–	–	1	1	–	–	–	–
64	1	–	–	2	1	1	1	–	1	–	–
65	–	–	–	4	–	–	–	–	–	1	1
66	–	–	1	3	–	2	–	–	–	–	–
67	–	–	3	–	1	–	1	–	1	–	–
68	–	1	–	7	–	1	1	–	1	–	–
69	–	–	–	3	–	–	1	–	–	–	–
70	–	–	–	4	–	–	1	–	–	–	–
71	–	–	–	–	–	1	4	–	–	–	–
72	–	4	–	1	–	1	2	–	–	–	–
73	–	3	–	7	–	3	2	–	2	–	2
74	–	–	–	1	3	3	–	–	1	–	–
75	–	1	–	1	2	1	–	–	–	–	–
76	–	–	–	2	1	1	–	–	–	–	1
77	–	–	–	1	1	2	1	–	–	–	–
78	–	–	–	–	–	3	1	–	–	–	–
79	–	–	–	4	–	–	–	4	–	–	–
80	–	1	–	1	–	3	–	–	–	–	1
Total	6	58	10	132	32	79	34	6	10	2	12

381 offences plus 45 miscellaneous and liquor equal 426.

[1] Includes operating to endanger.

Miscellaneous Offences.

Case No.	Offences	Number of Times.
9	Kidnapping	1
10	Assault to rape	1
14		2
28		1
55		1
60		1
24	Abuse of female child	1
38		1
31	Unnatural act	1
	Total	10

Liquor Offences.

Case Number	Number of Times.	Case Number	Number of Times.
4	2	38	1
7	3	39	1
11	4	43	1
13	3	47	1
14	1	48	10
15	1	49	1
18	1	54	25
20	2	58	1
24	5	60	2
25	1	76	2
28	2	Total	71
29	1		

Dispositions of Cases 1 to 40.

Case Number.	Dismissed.	Nol Pros.	No Bill.	Acquitted.	On File.	Sentence Suspended.	Probation.	Imprisonment.[1]	Fine.	Appealed.	No Record.	Pending.
1	–	–	–	1	1	–	3	1*	–	–	–	–
2	–	–	–	–	–	–	–	1*	1	–	–	–
3	1	1	–	1	3	2	–	1	–	–	–	–
4	–	–	–	6	4	–	5	1*, 3	2	–	–	–
5	5	1	1	1	1	2	1	1*, 1	–	–	–	–
6	–	1	1	2	5	1	1	5	2	–	3	–
7	5	–	–	5	2	–	4	2	3	–	–	–
8	1	–	–	–	–	4	1	3	–	–	–	1
9	4	–	–	3	4	–	3	3*, 1	–	–	–	–
10	1	–	–	–	3	–	1	4*, 1	–	–	–	–
11	1	–	1	2	4	1	3	3*, 3	–	–	–	1
12	–	–	–	5	2	1	2	2*	1	–	3	1
13	1	–	1	3	–	–	5	1*, 1R, 3	3	–	–	–
14	2	–	–	1	–	1	4	1*	–	–	–	–
15	2	–	1	–	1	–	3	1	–	–	–	–
16	–	–	1	–	1	–	2	1R, 1	–	–	–	–

[1] * equals long sentences, 37; R equals Reformatory sentences, 8; short sentences, 83; total, 128.

Dispositions of Cases 1 to 40 — Concluded.

Case Number.	Dismissed.	Nol Pros.	No Bill.	Acquitted.	On File.	Sentence Suspended.	Probation.	Imprisonment.[1]	Fine.	Appealed.	No Record.	Pending.
17	1	–	3	2	2	–	4	1R	–	–	–	–
18	2	1	1	2	–	–	2	2	2	–	–	–
19	–	–	–	–	5	–	3	2, 1R	–	–	–	–
20	3	–	–	2	2	–	2	–	4	–	–	1
21	–	–	–	–	1	–	1	1°, 9	–	–	–	–
22	4	–	2	5	1	1	–	2	–	–	–	–
23	1	–	–	–	4	1	1	1°, 3	–	–	–	–
24	1	–	1	6	–	–	3	5	1	–	–	–
25	2	–	1	1	2	1	5	1R, 3	–	–	1	–
26	3	–	–	3	1	–	2	1°	1	–	–	–
27	–	–	–	1	–	–	–	1°, 5	–	–	–	–
28	–	–	–	–	2	1	2	–	–	–	–	–
29	3	1	–	2	2	–	2	1R, 1	–	–	–	–
30	2	–	–	1	–	1	–	4°, 4	1	–	–	–
31	1	–	–	–	1	1	–	3°, 6	–	–	–	–
32	1	–	–	1	2	5	5	2	1	–	1	–
33	–	1	–	–	3	–	–	1R, 2	–	–	–	–

34	–	–	–	–	1	–	–	2*, 2	1	–	–	–
35	1	–	1	2	–	–	–	–	1	–	–	–
36	1	–	–	–	–	2	1	4*, 1	1	–	–	–
37	1	1	–	–	–	–	2	1*, 4	2	–	–	–
. . . .	–	–	–	1	–	–	1	1R, 1	1	–	–	–
39	1	–	–	–	1	1	2	3	3	–	–	–
40	4	1	2	4	6	–	2	1*, 1	–	–	–	1
Total . . .	55	8	17	63	67	26	78	128	31	–	8	5
						486						

[1] * equals long sentences, 37; R equals Reformatory sentences, 8; short sentences, 83; total, 128.

Dispositions of Cases 41 to 80.

Case Number.	Dismissed.	Nol Pros.	No Bill.	Acquitted.	On File.	Sentence Suspended.	Probation.	Imprisonment.[1]	Fine.	Appealed.	No Record.	Pending.
41	1	–	–	3	1	–	1	2*, 2	–	–	–	–
42	2	2	–	–	–	–	1	1*	–	–	–	–
43	4	–	1	5	1	–	–	3*	2	–	–	–
44	5	–	–	–	–	–	3	–	1	–	2	–
45	7	2	1	1	1	–	1	1	1	–	1	1
46	1	1	1	3	4	–	2	1R, 1	1	–	–	–
47	1	–	–	1	1	2	2	2	–	–	–	1
48	1	2	–	3	4	1	3	1	2	–	–	–
49	6	2	–	1	6	–	–	2*, 2	–	–	–	–
50	2	–	–	2	1	–	2	–	–	–	–	–
51	2	2	–	3	–	2	1	2	3	–	–	–
52	4	1	–	2	4	3	4	1	–	–	–	–
53	1	–	2	2	5	–	2	2*, 1	–	–	1	–
54	7	2	–	3	9	1	1	10	4	–	–	–
55	1	–	1	2	1	–	2	3	1	–	–	–
56	2	1	–	4	1	1	–	3	1	–	–	–
57	1	1	–	3	1	2	1	–	1	–	2	–
58	4	–	–	1	4	1	2	1*, 8	–	–	–	–
59	–	–	–	1	–	–	1	2	–	–	–	–
60	2	–	–	–	1	1	–	4	2	–	1	–
61	2	–	–	–	3	–	1	1R, 1	–	–	–	–
62	–	2	–	–	1	–	–	2*, 1R	–	–	–	–

62	–	2	–	–	1	–	–	2*, 1R	–	–	–	–
63	1	–	–	–	1	1	–	2	–	–	–	–
64	–	–	1	–	1	1	–	1, 1R*, 2	–	–	–	–
65	–	–	–	–	2	1	–	3	–	–	–	–
66	–	–	–	–	–	–	1	1*, 3	1	–	–	–
67	1	1	1	1	1	–	1	–	–	–	–	–
68	2	–	–	–	1	1	2	1R, 3	–	–	–	1
69	–	–	–	–	2	–	1	1	–	–	–	–
70	–	–	–	–	–	1	2	–	–	–	–	2
71	–	–	–	–	1	1	–	2*, 1	–	–	–	–
72	–	–	1	1	2	–	2	1*	1	–	–	–
73	–	–	2	4	4	–	5	3	1	–	–	–
74	–	–	1	2	1	1	1	1*, 1	–	–	–	–
75	1	–	–	1	–	1	2	1*	–	–	–	–
76	–	–	–	1	2	1	1	1R, 1	–	–	–	–
77	–	–	–	–	1	1	1	1*, 1R	–	–	–	–
78	–	–	–	–	–	1	1	1R, 1	–	–	–	–
79	1	–	–	–	–	–	1	2R, 2	1	–	1	–
80	1	–	–	–	1	–	1	3*	–	–	–	–
	63	19	12	50	69	25	52	100	23	–	8	5
						426						

[1] * equals long sentences, 24; R equals Reformatory sentences, 10; short sentences, 66; total, 100.

Results of Appeals — Cases 1 to 44.

Case Number.	Number of Appeals.	Nol Pros.	Discharged.	Acquitted.	Increase.	Penalty Sustained.	Sentence Reduced.	Changed to Fine.	Probation.	On File.	No Record and Pending.
1	–	–	–	–	–	–	–	–	–	–	–
2	–	–	–	–	–	–	–	–	–	–	–
3	–	1	–	–	–	–	–	–	–	–	–
4	8	–	1	1	–	1	–	–	2	3	–
5	2	1	–	–	–	1	–	–	–	–	–
6	5	1	–	–	–	2	–	–	1	–	1
7	1	–	–	–	1[1]	–	–	–	–	–	–
8	4	–	–	–	–	3	–	–	–	–	1
9	–	–	–	–	–	–	–	–	–	–	–
10	2	–	–	–	–	–	2	–	–	–	–
11	8	–	–	1	–	2	1	–	1	3	–
12	3	–	–	–	–	–	–	–	1	–	1
13	4	–	–	1	–	–	2	–	1	–	–
14	1	–	–	–	–	–	–	–	1	–	–
15	–	–	–	–	–	–	–	–	–	–	–
16	–	–	–	–	–	–	–	–	–	–	–
17	–	–	–	–	–	–	–	–	–	–	–
18	2	–	–	1	–	1	–	–	–	–	–
19	–	–	–	–	–	–	–	–	–	–	–
20	2	–	–	–	–	–	–	–	1	–	1
21	1	–	–	–	–	–	–	–	–	1	–
22	2	–	–	1	–	1	–	–	–	–	–

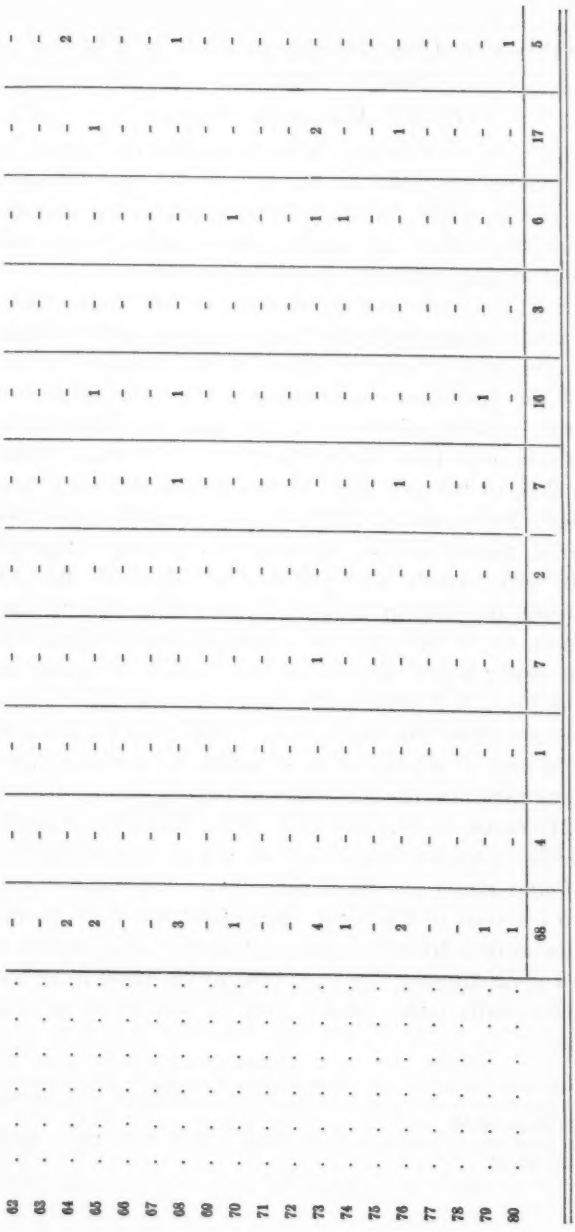
22	2	–	–	1	–	1	–	–	–	–	–
23	4	–	–	–	–	–	–	–	–	4	–
24	1	–	–	–	[2]	–	–	–	[2]	–	–
25	2	–	–	–	–	–	–	–	1	–	1
26	3	–	–	–	–	–	1	–	1	1	–
27	3	–	–	1	–	–	2	–	–	–	–
28	–	–	–	–	–	–	–	–	–	–	–
29	3	1	–	1	–	–	–	–	1	–	–
30	2	–	–	–	–	1	–	–	1	–	–
31	2	–	–	–	–	1	–	–	–	1	–
32	4	–	–	–	–	–	1	–	2	1	–
33	–	–	–	–	–	–	–	–	–	–	–
34	–	–	–	–	–	–	–	–	–	–	–
35	3	–	–	–	–	–	1	–	1	–	1
36	3	–	–	1	–	–	1	–	–	1	–
37	3	–	–	–	–	–	1	–	2	–	–
38	–	–	–	–	–	–	–	–	–	–	–
39	3	–	–	–	–	1	–	–	1	1	–
40	3	1	–	2	–	–	–	–	–	–	–
41	2	–	–	–	–	–	–	–	1	–	1
42	2	–	–	2	–	–	–	–	–	–	–
43	1	–	–	–	–	–	–	–	–	–	1
44	–	–	–	–	–	–	–	–	–	–	–
	89	5	1	12	1	14	12	–	20	15	8

[1] Changed from $200 to 1 month, $50.

[2] Probation on appeal, but defendant later surrendered and sentence imposed and increased.

Results of Appeals — Cases 45 to 80.

Case Number.	Number of Appeals.	Nol Pros.	Discharged.	Acquitted.	Increase.	Penalty Sustained.	Sentence Reduced.	Changed to Fine.	Probation.	On File.	No Record and Pending.
45	–	–	–	–	–	–	–	–	–	–	–
46	–	–	–	–	–	–	–	–	–	–	–
47	4	–	1	–	1	–	1	–	–	1	–
48	4	1	–	–	–	–	1	–	1	1	–
49	–	–	–	–	–	–	–	–	–	–	–
50	1	–	–	–	–	–	–	–	1	–	–
51	2	.	–	.	–	–	–	2	–	–	–
52	3	–	–	2	–	–	1	–	–	–	–
53	2	–	–	–	–	–	1	–	–	1	–
54	20	1	–	2	–	1	6	1	–	9	–
55	2	–	–	1	–	–	1	–	–	–	–
56	4	1	–	1	–	1	1	–	–	–	–
57	3	1	–	–	–	–	–	–	1	–	1
58	5	–	–	–	1	2	1	–	–	1	–
59	–	–	–	–	–	–	–	–	–	–	–
60	1	–	–	–	–	1	–	–	–	–	–
61	–	–	–	–	–	–	–	–	–	–	–


62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80
68 4 1 7 2 7 16 3 6 17 5

Analysis of Dispositions of Cases of Certain Serious Offences.[1]

Offences Against the Person.

Five of the most serious offences against the person in the statistics provided by the Report of the Commissioner of Correction for the year 1932 have been selected for analysis. These are murder, manslaughter, rape and indecent assault, robbery, and felonious assault.

During the year ending September 30, 1932, 2,211 defendants charged with the above offences were brought before the various inferior courts in this State. At the end of the year there were pending the cases of 81 defendants, making a total of 2,130 cases in which some disposition was had during the year. Of these 2,130 cases, 209, or 9.8 per cent, of the defendants were not arrested; 293 cases, or 13.7 per cent, were dismissed before trial, placed on file, quashed or otherwise disposed of. In other words, 23.5 per cent of the cases did not even reach the stage of a hearing in the lower court. In 345 cases, or 16 per cent, the defendants were dismissed by the lower court after a hearing, either because the court did not find probable cause, or, having taken jurisdiction, acquitted the defendant. This makes a total of 39.5 per cent of all the cases in which no action of any kind was taken on the prosecutions begun.

In 247 cases, or 11.1 per cent of the total, the defendants either pleaded guilty, or, on a plea of not guilty, were found guilty in the lower courts. In 1,036 cases, or 48.6 per cent of the total, the defendants were bound over for action by the Superior Court. This makes a total of approximately 59.7 per cent of the cases in which the lower court either bound over or convicted the defendant.

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[1] Statistics taken from annual report, Commissioner of Correction, for 1932, as follows:
Criminal Prosecutions in the Municipal and District Courts, Tables 118, 122, pp. 130-131; Tables 126, 128, pp. 133-134.
Criminal Prosecutions in the Superior Courts, Tables 74, 76, 78, 79, pp. 110-111; Tables 86, 88, 90, pp. 114-115.

Of the 247 defendants who pleaded guilty or were found guilty in the lower court, 30.3 per cent, or 75 defendants, were placed on file. Upon 25, or 10.1 per cent of the total convicted defendants, a sentence of fine was imposed and went into effect; and upon 37, or 15 per cent of the total number of defendants, a sentence of imprisonment was imposed and went into effect. In 10 cases, 4 per cent of the total, in which a fine was imposed, appeals were taken. In 18 cases, 7.3 per cent, in which imprisonment was imposed, appeals were taken. In 79 cases, or 31.9 per cent of the total convictions, probation was ordered; 3 cases, or 1.2 per cent of the total convictions, were pending for sentence at the end of the year.

A total of 1,500 defendants were bound over for trial in the Superior Court. There were still pending at the end of the year 142 cases which were not disposed of, leaving a total of 1,358 cases disposed of by the upper court. Of these 1,358 cases, in 238, or 17.5 per cent, no indictments were returned by the grand jury. In 90 cases, or 8 per cent of the total, the defendants were not arrested and the cases could not be tried. In 132 cases, or 9.6 per cent of the total, the cases against the defendants were dismissed before trial, placed on file, quashed or otherwise disposed of. Thus in 34.2 per cent of all the cases which were handled by the Superior Court, a few over one-third were dismissed in various ways before trial despite the fact that the inferior courts had already made a finding of probable cause. To this number of cases must be added 137, or 10 per cent of the total number of cases, in which the defendants were acquitted after having been tried. Thus 44.2 per cent of all defendants who were brought before the Superior Court for trial, charged with the most serious offences against the person, escaped unscathed despite a preliminary finding of probable cause.

In 761 cases, or 56 per cent of the total, convictions were obtained in the Superior Court. But 534 cases, or 39.3 per cent of the total number of cases, were convic-

tions after pleas of guilty. In only 184 cases, or 13.5 per cent of the total cases, were the defendants found guilty after trial, with or without a jury, following a plea of not guilty. Thus for every plea of not guilty there were at least three pleas of guilty. The practice of defendants pleading guilty will be seen to exist to an even greater extent in offences against property, and comment as to its significance will be made in discussing such offences.

Of the 761 convictions, 100, or 13.1 per cent of the total convictions, were placed on file after conviction; 126, or 16.5 per cent of the total convictions, were placed on probation; 11 defendants, or 1.4 per cent of the total, were sentenced to pay a fine only; and 500 defendants, or 65.6 per cent of the total convictions, were sentenced to prison. Cases against 24 convicted defendants, or 3.1 per cent of the total convictions, were pending for sentence at the end of the year.

Thus, if we take 1,000 cases which are begun in the lower courts on charges of murder, manslaughter, rape and indecent assault, robbery, and felonious assault, on the basis of the above percentages, 100 defendants will not be arrested; 137 defendants will be dismissed before any judicial hearing is had; another 160 defendants will either be acquitted or will have their cases dismissed on the preliminary hearing; 111 defendants will be found guilty in the lower court; and 486 defendants will be passed on to the upper court for trial, probable cause having been found against them.

If we follow these 486 defendants through the vicissitudes of the Superior Court, we find that 84 defendants will not be indicted. In 34 cases the defendants will not be arrested and in 47 cases the defendants will be dismissed before getting to trial. Of those tried, 49 defendants will be acquitted. Thus 214 of the 486 defendants bound over will fall by the wayside, leaving 272 of the original 1,000 defendants entering the lower courts, who receive a conviction in the higher court. Of these 272, 36 defendants will be placed on file, 44 will be placed on

probation, 5 defendants will be fined and 178 will be sent to prison. Thus in only 227 cases will the Superior Court impose an effective sentence of probation, fine or imprisonment, and in only 183 cases will the sentence be fine or imprisonment.

But of the 1,000 cases entering the lower court, the lower court itself found 111 defendants guilty. Of these 111 defendants, 33 were placed on file and 36 were placed on probation. Fine or imprisonment was imposed and went into effect in 28 cases. In 12 cases, fine or imprisonment was imposed but the sentence was appealed.

Thus if both courts are considered, of the 1,000 original prosecutions, sentences to fine or imprisonment were imposed and went into effect in 211 cases, or slightly over one-fifth of the total. If the 80 sentences of probation be added to the total of effective sentences, a total of 291 out of the original 1,000 prosecutions received an effective sentence of some kind.

In an additional 12 cases, sentence of fine or imprisonment was imposed by the lower courts and appealed. But in three cases out of four, the Superior Court did not sustain the original sentence of fine or imprisonment. Thus, of these 12 cases, only three cases more need be added to give the final total of sentences of any kind, probation, fine, or imprisonment, imposed by both courts.

There is no assurance that even in this comparatively small number of cases in which sentence was imposed the defendants received sentences which they deserved. The fact that of every four convictions three are upon pleas of guilty leads one to suspect that upon many of the convictions the defendant made a bargain with the district attorney for a plea in return for favorable treatment as to the penalty.

Lower Courts, Entire State.

Offences.	Total Defendants.	Defendants pending End of Untried, Year.	Total Defendants Disposed of.	Defendants not Arrested.	Defendants Dismissed before Trial.	Defendants Dismissed, Nol Pros., etc., during Trial.	Defendants Bound Over.	Defendants Guilty.	Sentence.				Defendants Pending for Sentence.	Probation.	Defendants placed on File after Conviction.
									In effect.		Appealed.				
									Fine Only.	Prison.	Fine Only.	Prison.			
Murder	71	2	69	6	15	8	40	–	–	–	–	–	–	–	–
Manslaughter	184	2	182	2	30	100	47	3	–	–	–	–	–	–	3
Rape and indecent assault	427	11	416	42	37	45	247	45	2	23	–	6	1	7	6
Robbery	840	46	794	123	122	98	440	11	1	–	–	–	2	1	7
Felonious assault	689	20	669	36	89	94	262	188	22	14	10	12	–	71	59
Total	2,211	81	2,130	209	293	345	1,036	247	25	37	10	18	3	79	75
Percentage	–	–	100.	9.8	13.7	16.0	48.6	11.1	–	–	–	–	–	–	3.3
	–	–	–	–	–	–	–	100.0	10.1	15.0	4.0	7.3	1.2	31.9	30.3

Summary.

100% total defendants handled.
- 39.5 cases dropped in inferior courts.
  - 9.8 defendants not arrested.
  - 13.7 defendants dismissed, etc.
  - 16.0 defendants acquitted and no probable cause.
- 48.6 defendants bound over.
- 11.1 defendants guilty.

100% defendants guilty.
- 30.3 placed on file.
- 25.1 sentence in effect.
- 11.3 sentence appealed.
- 31.9 probation.
- 1.2 pending for sentence.

Superior Courts, Entire State.

Offences.	Total Defendants.	Defendants pending End of Untried, Year.	Total Defendants Disposed of.	Defendants not Indicted.	Defendants not Arrested.	Defendants Dismissed.	Defendants Acquitted.	Convicted				On File after Conviction.	Probation.	Sentence.		Pending for Sentence.
								Plea Not Guilty.	Plea Guilty.	Convicted pending from Previous Year.	Total Convicted.			Fine Only.	Prison.	
Murder	51	6	45	11	5	8	7	10	4	–	14	–	–	–	11	3
Manslaughter	80	9	71	29	2	12	9	6	13	–	19	–	2	–	17	–
Rape	352	30	322	45	8	21	39	46	137	26	209	27	49	1	120	12
Robbery	705	68	637	74	57	64	60	86	290	6	382	48	44	–	283	7
Felonious assault	312	29	283	79	18	27	22	36	90	11	137	25	31	10	69	2
Total	1,500	142	1,358	238	90	132	137	184	534	43	761	100	126	11	500	24
Percentage	–	–	100.	17.5	.7	9.6	10.	–	–	–	56.	–	–	–	–	–
	–	–	–	–	–	–	–	13.5	39.3	3.2	56.	–	–	–	–	–
	–	–	–	–	–	–	–	–	–	–	56.	7.3	9.3	.8	36.8	1.7
	–	–	–	–	–	–	–	–	–	–	100.	13.1	16.5	1.4	65.6	3.1

Summary.

100% total defendants handled.
- 44.1 cases dropped, dismissed, etc.
- 55.9 convictions. 100%
  - 7.3 on file after . . . 13.1
  - 9.3 probation . . . 16.5
  - .8 fine 1.4
  - 36.8 prison 65.6
  - 1.7 pending for sentence . 3.1

56% convictions.
- 13.5 on plea of guilty.
- 39.3 on plea of not guilty.
- 3.2 convictions from previous year.

Offences Against Property.

The following analysis covers three of the most frequently committed offences against property: breaking and entering and larceny; larceny, including embezzlement, fraud, cheating and false pretences; and larceny of automobiles. Fourteen thousand four hundred and fifty-one defendants were charged with these offences in the lower courts during the year ending September 30, 1932. There were 303 cases pending at the end of the year, leaving a total of 14,148 defendants with whom the lower courts dealt. Of this total, 1,503 defendants, or 10.6 per cent, were never arrested. The cases against 1,585, or 11.2 per cent of the total defendants, were either dismissed or quashed, placed on file, or otherwise disposed of. Thus 21.8 per cent of all the defendants were not brought before the lower court at all for hearing. An additional 1,213 defendants, or 8.5 per cent, were either acquitted by the court or no probable cause was found against them. Thus 30.3 per cent of all cases were disposed of without anything having been done to the defendant.

Seven thousand four hundred and twenty defendants, or 52.4 per cent of the total disposed of in the lower courts, were convicted during the course of the year. Of these, 2,789, or 19.7 per cent of the total, had pleaded not guilty, and 4,583, or 32.3 per cent of the total, had pleaded guilty. An additional 2,427, or 17.2 per cent of all cases, were bound over for trial to the Superior Court.

Of the 7,420 convictions, 1,975, or 26.6 per cent, were placed on file after trial; 2,663, or 35.9 per cent of all the convictions, were placed on probation; 756 defendants, or 10.2 per cent of all the convicted defendants, were sentenced to pay a fine; 1,163, or 15.7 per cent of all the convicted defendants, were sentenced to prison. One hundred and seventeen defendants of those fined and 662 of those sentenced to prison took an appeal from their conviction and sentence, making a percentage of 10.4 of all the total convictions in which appeals were

taken. Eighty-four cases, or 1.2 per cent of the total convictions, were pending for sentence at the end of the year.

The upper court began the year with 3,669 cases in which defendants had been bound over; 303 cases were pending at the end of the year, leaving a total of 3,366 defendants whose cases were disposed of by the Superior Court during the course of the year. Of this number, 331, or 9.8 per cent, were not indicted; 303 defendants, or 9 per cent, were not arrested; 323 defendants, or 9.2 per cent, had their cases quashed, nol prossed, placed on file, or otherwise disposed of before trial. Thus 28 per cent of the cases were disposed of without any trial. Of the defendants who went to trial, 145, or 4.3 per cent of the total number of defendants, were acquitted.

There were convictions in 2,264 cases, or 67.2 per cent of the total disposed of during the year. But only 268, or 7.9 per cent of all defendants, pleaded not guilty and were found guilty by either a jury or a judge. On the other hand, 1,816 defendants, or 53.9 per cent of the total number of defendants, pleaded guilty. Cases against 180 convicted defendants, or 5.4 per cent of the total, were carried over from the previous year.

Of the 2,264 convictions which were obtained during the course of the year, the cases against 508 defendants, or 22 per cent of the total number of defendants convicted, were placed on file. An additional 762, or 33.6 per cent of all convicted defendants were placed on probation. There were fines in 16 cases, or .7 per cent of the total. Only 820 defendants, 32.6 per cent of the total who were convicted, were sentenced to imprisonment by the Superior Court. One hundred and fifty-eight cases, or 6.5 per cent of the total convictions, were pending at the end of the year.

Thus, of every 1,000 cases which enter the lower court on these charges, 218 cases will fall by the wayside without having come to any hearing in the lower courts. An additional 85 cases will drop away because the lower court does not find probable cause, or because, after

having taken jurisdiction, the lower court acquits the defendant. One hundred and seventy-two defendants will be bound over to answer for the offences to the Superior Court. Five hundred and twenty-four will be convicted in the lower courts. But of these 524, 139 will be placed on file after conviction, which means that nothing is done in these cases. An additional 188 defendants will be placed on probation. This leaves 197 defendants who are sentenced to fine or imprisonment. But of these 197 defendants, only 53 who are sentenced to fines and 82 who are sentenced to imprisonment, — that is, 135 defendants, — have their sentences go into effect without appeal. Fifty-two defendants appeal their sentences to the Superior Court. About 10 cases will be pending at the end of the year, for sentence.

Of the original 1,000 cases, 172 will be bound over. Of these, 48, or 28 per cent, drop by the wayside without getting to trial. This leaves 124 cases which will be tried. Of these 124 cases, 4.3 per cent or 7 cases, will be acquitted. In 14 cases the defendants will be found guilty after having been tried by a judge or by judge and jury on a plea of not guilty. In 93 cases the defendant will plead guilty and 10 cases will be pending for sentence after conviction during the previous year.

Of the 117 defendants convicted in the upper court, 26 defendants will be placed on file and 39 defendants will be placed on probation. Only 42 defendants will be given a prison sentence and one defendant will be fined. Eight defendants will have their cases pending for sentence at the end of the year.

If now the sentences which go into effect are recapitulated in the 1,000 prosecutions which were begun, they are as follows: 188 sentences of probation in the lower courts, and 135 sentences of fine and imprisonment which were not appealed, making a total of 323 sentences which went into effect. To these must be added the 39 sentences of probation and the 43 sentences of fine and imprisonment imposed by the Superior Court on bound-over cases. This makes a total of 405 cases in which

sentences of any kind, probation, fine or imprisonment are imposed. To these must be added 13 cases in which the appealed sentences will take effect. This makes a grand total of 418 cases out of 1,000 in which any sentence at all is imposed. But of this total, only 191 sentences are sentences to fines or imprisonment.

It must also be pointed out that this does not mean that in 191 cases the defendants received their just deserts. Since a very large percentage of the convictions in property offences are on pleas of guilty, it is to be expected that a large percentage of the defendants were punished less severely than the law intended, as a result of a bargain with an over-busy prosecuting attorney.

Lower Courts, Entire State.

Offences.	Total Defendants.	Defendants pending Untried, End of Year.	Total Defendants Handled.	Defendants not Arrested.	Defendants Dismissed before Trial.	Defendants Acquitted, etc.	Defendants Bound Over.	Convicted.				On File after Conviction.	Probation.	Sentence.				Pending for Sentence.
								Plea Not Guilty.	Plea Guilty.	Convicted Previous Year and pending for Sentence.	Total Convictions.			In effect.		Appealed.		
														Fine Only.	Prison.	Fine Only.	Prison.	
Larceny of auto	1,358	16	1,342	66	124	147	432	219	352	2	573	184	171	27	130	10	48	3
Breaking and entering	2,919	49	2,870	183	277	187	1,510	174	539	–	713	226	292	15	122	2	50	6
Larceny	10,174	238	9,936	1,254	1,184	879	485	2,396	3,692	46	6,134	1,565	2,200	714	911	105	564	75
Totals	14,451	303	14,148	1,503	1,585	1,213	2,427	2,789	4,583	48	7,420	1,975	2,663	756	1,163	117	662	84
	–	–	100.	10.6	11.2	8.5	17.2	–	–	–	52.4	–	–	–	–	–	–	–
	–	–	–	–	–	–	–	19.7	32.3	.4	52.4	–	–	–	–	–	–	–
Percentage	–	–	–	–	–	–	–	–	–	–	52.4	13.9	18.8	5.3	8.2	.8	4.4	.6
	–	–	–	–	–	–	–	–	–	–	100.0	26.6	35.9	10.2	15.7	1.5	8.9	1.2
	–	–	–	–	–	–	–	37.5	61.8	.7	100.0	–	–	–	–	–	–	–

Summary.

100% total defendants handled.
30.3 cases dropped in Inferior Court.
10.6 defendants not arrested.
11.2 defendants dismissed before trial.
8.5 defendants acquitted.
17.2 bound over.

52.4 defendants guilty. 100%
13.9 placed on file . . . 26.5
18.8 probation . . . 35.9
13.5 sentence in effect . 25.9
5.2 sentence appealed . 10.4
.6 pending for sentence . 1.2

Superior Courts, Entire State.

Offences.	Total Defendants.	Defendants pending Untried, End of Year.	Total Defendants Disposed of.	Defendants not Indicted.	Defendants not Arrested.	Defendants Dismissed, etc.	Defendants Acquitted.	Convictions.				On File after Conviction.	Probation.	Sentence.		Pending for Sentence.
								Plea Not Guilty.	Plea Guilty.	Convicted and Pending Sentence.	Total Convictions.			Fine Only.	Prison.	
Larceny of auto	671	42	629	93	43	31	33	70	358	1	429	98	113	2	197	19
Breaking and entering	1,873	91	1,78	154	73	110	57	144	1,115	129	1,388	274	553	1	482	78
Larceny	1,125	170	955	84	187	182	55	54	343	50	447	136	96	13	141	61
Totals	3,669	303	3,366	331	303	323	145	268	1,816	180	2,264	508	762	16	820	158
Percentage	–	–	100.	9.8	9.	9.6	4.3	–	–	–	67.2	–	–	–	–	–
	–	–	–	–	–	–	–	7.9	53.9	5.4	67.2	–	–	–	–	–
	–	–	–	–	–	–	–	–	–	–	67.2	15.	22.6	.5	24.3	4.4
	–	–	–	–	–	–	–	–	–	–	100.0	22.	33.6	.7	36.2	6.5

Summary.

100% total defendants handled.
- 32.7 cases dropped, dismissed, etc.
- 67.2 convictions. 100%
  - 15.0 on file after 22.0
  - 22.6 probation . 33.0
  - .5 fine . . .7
  - 24.3 prison . 36.2
  - 4.4 pending . 6.5

67.2 convictions.
- 53.9 on plea of guilty.
- 7.9 on plea of not guilty.
- 5.4 convictions pending from previous year.

Analysis of Appeals in Criminal Cases.[1]

In the year ending September 30, 1932, there were 129,413 convictions for all offences in the Municipal and District Courts. Of these convictions, 39,465, or 30.5 per cent, were placed on file. This means that in almost one-third of all the convictions found by the lower courts no sentence of any kind is imposed. Of all the convictions, in only 63,693, or 49.1 per cent, was a sentence of imprisonment or fine imposed. Sentences to probation were imposed in 25,549 cases, or 19.7 per cent of all convictions. Thus in only 68.8 per cent of all the convictions was there any sentence of any kind, either to probation, imprisonment or fine. There were 796 convictions, or .5 per cent of the total, pending for sentence at the end of the year.

Of the 63,693 convictions in which sentences to fines or imprisonment were imposed, 54,076, or 84.9 per cent, went into effect. In 9,617, or 15.1 per cent, of the cases, such sentences were appealed.

In prosecutions for larceny, 6,134 convictions were obtained in the lower courts. Of these convictions, 1,565, or 25.4 per cent, were placed on file after convictions. This is 5.1 per cent less than was placed on file in all offences, but is still a sufficiently large percentage to be an object of concern. Twenty-two hundred of the larceny convictions, or 35.8 per cent of the total, were placed on probation. This is a substantially higher percentage than is true for all offences, the difference being 16.1 per cent. In larceny convictions, 2,294, or 37.3 per cent, resulted in sentences to fines or imprisonment. This is 11.8 per cent lower than obtains for convictions in all offences. At the end of the year there were pend-

[1] Figures taken from annual report, Commissioner of Correction, for the year ending November 30, 1932, as follows:

Table 71, Statistics of Criminal Prosecutions of the Superior Courts for the year ending September 30, 1932, showing appeals for all offences, p. 109.

Table 91, showing appeals in larceny cases, p. 115.

Table 115, Criminal Prosecutions in the Municipal and District Courts, for the year ending September 30, 1932, showing total offences, p. 126.

Table 128, showing larceny offences.

ing for sentence 75 larceny convictions, or 1.2 per cent of the total larceny convictions. Of the 2,294 larceny convictions in which sentence to fines or imprisonment was imposed, 669, or 29.1 per cent, were appealed. This is 14 per cent higher than the percentage of appeals for all offences. These figures indicate that a conviction in the lower courts does not necessarily mean that a sentence of any kind will be imposed. The large percentage of cases which are placed on file without any action being taken raises a serious question as to why this action is taken and as to whether there are sufficient reasons to justify it.

The tables also show that there is a basis for the complaint that too many appeals are taken to the Superior Court. The Superior Court has large numbers of felony cases to try, either with or without a jury. If, in addition, 9,617 petty cases are dumped upon it from the lower courts for a full rehearing on appeal, either with or without a jury, it is evident that the Superior Court does not have the time to do justice to either the more serious felony prosecutions or to the appeals on these petty prosecutions.

It is interesting to note that such a large percentage of appeals is taken in larceny cases, as it is probable that the percentage of habitual and professional criminals is higher in this class of offences than in any other. The appeal increases considerably the possibility that this type of offender will not be punished at all.

It is not possible from the printed figures to make the number of appeals disposed of by the Superior Court harmonize with the number of appeals sent up from the inferior courts. Thus it is not possible to follow the cases herein noted in which appeal has been taken to their final disposition in the Superior Courts. However, the statistics for the Superior Courts indicate what happens generally to appeals from the inferior courts and may be taken as indicating what probably happened to the 9,617 appeals passed upon from the inferior courts during the year under consideration.

During the year 1931–32, 11,457 appeals entered the Superior Court. At the end of the year 1,776 appeals, or 15.5 per cent of the total, were pending. This would indicate that the Superior Court had considerable difficulty in keeping abreast of the large number of appeals which are presented to it for disposition.

In the year ending September 30, 1932, the Superior Court disposed of a total of 9,681 appeals. Of this total, in 6,489 cases, or 67 per cent, the finding of guilt in the lower courts was upheld. The original finding was reversed and the defendant acquitted in 1,231, or 12.7 per cent of all the cases. In 1,938 cases, or 20 per cent of the total appeals, the statistics show that the appeal was dismissed. It is impossible to determine in how many cases the appeal was withdrawn, permitting the original sentence to take effect, and in how many cases the appeal was quashed before trial, or otherwise disposed of under this heading of "cases dismissed."

Of the total number of convictions (6,489), 1,777, or 27.2 per cent, were placed on file after the original finding of guilt was upheld. Here again, where there had been a *second* finding of guilt in almost one-third of the cases, no sentence of any kind was imposed.

In 3,185, or 48.7 per cent of all the convictions in the Superior Court, there were sentences of fine or imprisonment. Thus on a second finding of guilt, effective sentence was imposed in less than half of the cases. But it is to be noted that these 3,185 cases in which sentence of fine or imprisonment was imposed are but 27.8 per cent of the 11,457 cases in which a finding of guilt and a sentence to fine or imprisonment was imposed in the lower court, since only such sentences are appealed. In other words, the statistics seem to indicate that where a defendant is convicted and sentenced to fine or imprisonment in the upper court, there are almost three chances in four that the sentence of the lower court will not be confirmed by a finding of the appellate court. Under these conditions it is evident that there is a decided in-

centive for the defendant to take an appeal from his sentence in the inferior court.

Of the total number of original findings of guilt sustained, 934, or 14.4 per cent, were placed on probation. It is to be noted that the statistics show that appeals are taken only from cases in which a sentence of fine or imprisonment was imposed. Putting 14.4 per cent of the defendants whose conviction was upheld on probation means that the Superior Court reduced and modified the sentence in a considerable number of appeals. This is another direct indication in the statistics of the incentive to appeal.

The ratio of fines to imprisonment sentences imposed by the Superior Court differs perceptibly from the ratio of fines to imprisonment sentences imposed by the lower courts. For example, the higher court, in the convictions which were affirmed, imposed fines in 62 per cent of the cases and imprisonment in 37.9 per cent of the cases. The lower court, on the other hand, imposed fines in 54.3 per cent of the cases and imprisonment in 45.7 per cent of the cases. There is therefore some justification in the statistics for the feeling that an appeal favors the possibility of obtaining a modification of sentence in the Superior Court.

In larceny appeals, the percentage of findings of guilty upheld is slightly higher than in appeals for all offences. Of 810 appeals taken against larceny convictions, in 503, or 62.1 per cent of the cases, the original finding of guilt was sustained. This is to be compared with the 56.5 per cent for all offences. Of the rest of the 810 appeals, 136, or 16.7 per cent, were pending untried at the end of the year. In 78 cases, or 9.6 per cent of the total appeals, the finding of guilty in the lower court was not sustained, and the defendants were acquitted. In 88 cases, or 10.8 per cent of the total number of appeals, the appeal was dismissed, though here as elsewhere we cannot say whether the appeal was simply withdrawn or the case was quashed.

Of the total number of convictions for larceny in the appellate court (503), 103, or 20.5 per cent, were placed on file. This is still less than is the case for all offences. But the fact that one-fifth of all larceny cases in which there have been two findings of guilt are placed on file is significant. Although the number of larceny cases placed on file was relatively less than that for all offences, the number of defendants in larceny appeals who were placed on probation was relatively much larger than the number placed on probation for all offences. In 108 cases, or 21.4 per cent of all larceny convictions in the Superior Courts, the defendants were placed on probation. There were only 14.4 per cent of all defendants in convictions in the Superior Courts for all offences placed on probation.

The per cent of cases in which defendants were sentenced to fine or imprisonment in larceny cases heard in the Superior Courts was substantially the same as for all offences. It was 48.1 per cent for larceny appeals and 48.7 per cent for appeals in all offences.

Of all the larceny appeals in which the finding of guilty was sustained a modification of the original sentence is observable from the statistics in slightly over two-fifths of the cases. As noted previously, the appeals are always from sentences to fine or imprisonment. But in the upper court not alone is there the possibility that the finding of guilt will be overturned, as is done in about one-tenth of all the cases, but in about one-fifth of the cases in which the finding of guilt is upheld, the case may be put on file, and in another one-fifth, probation may be granted by the Superior Court, even though it was refused by the lower court. In larceny cases, therefore, on the basis of the statistics alone, one is justified in saying that there is at least one chance in two that a defendant convicted in the inferior court and sentenced to fine or imprisonment will escape any similar treatment in the Superior Court. Thus even in larceny cases the incentive to appeal a conviction is evident. Since larceny is largely an activity of habitual and professional criminals,

the possibility of escape from sentence by taking an appeal is all the more to be deplored.

The right of appeal in criminal cases from decisions of the inferior courts is provided in order to secure to defendants the right of trial by jury guaranteed by the Constitution of Massachusetts. This provision gives the defendant a right to "judgment by his peers" in all offences. A single judge, sitting alone, cannot therefore finally dispose of the large number of petty prosecutions which come before his court, unless the defendant accepts his judgment. What the practical effect of these provisions are can be seen from the statistics analyzed above. Further light is thrown on the subject by the statements made regarding appeals in the first report of the Judicial Council of Massachusetts (November, 1925, pp. 12–13). It is said there that one of the most important causes of congestion in the Superior Courts is the abuse of the right of appeal in criminal cases. The Superior Court is unable to try all the cases on its docket, and defendants have therefore taken advantage of this congestion, not because they wish to claim a constitutional right, but because they expect more favorable treatment as a result of the necessity of quickly disposing of large numbers of cases.

1932

Lower Court — Total Offences.

Total convictions			129,413	100.0%
On file after conviction		39,465		30.5%
Probation		25,549		19.7%
Sentence		63,693 (100.0%)		49.3%
In effect	54,076	(84.9%)		41.9%
Fine	45,377			
Prison	8,699			
Appealed	9,617 (100.0%)	(15.1%)		7.4%
Fine	5,223 (54.3%)			
Prison	4,394 (45.7%)			
Pending for sentence		706		.5%

From Statistics of Criminal Prosecutions of the Municipal Courts for 1932, Table 115, Annual Report, Commissioner of Correction, 1932, p. 126.

1932

Superior Court — All Appeals.

Total appeals			11,457	
Pending untried end of the year			1,776	
Total disposed of during the year			9,681	100.0%
Not arrested	23			.2%
Dismissed	1,938			20.0%
Acquittals	1,231			12.7%
Convictions	6,489 (100.0%)			67.0%
On file after	1,777	(27.2%)		
Probation	934	(14.4%)		
Sentence	3,185 (100.0%)	(48.7%)		
Fine	1,975 (62.1%)			
Prison	1,210 (37.9%)			
Pending for sentence	593	(9.0%)		

(Pending untried at the beginning of the year, 1,785.)

From Statistics of Criminal Prosecutions of the Superior Courts for 1932, Table 71, Appeals for All Offences, Annual Report, Commissioner of Correction, 1932, p. 109.

1932

Lower Court — Larceny Convictions.

Total convicted			6,134	100.0%
On file after conviction		1,565		25.4%
Probation		2,200		35.8%
Sentence		2,294 (100.0%)		37.3%
In effect	1,625 (100.0%)		(70.9%)	26.5%
Fines	714	(43.9%)		
Imprisonment	911	(56.1%)		
Appealed	669 (100.0%)		(29.1%)	10.8%
Fines	105	(15.7%)		
Imprisonment	564	(84.3%)		
Pending for sentence		75		1.2%

From Statistics of Criminal Prosecutions in the Municipal Courts for 1932, Table 128, Annual Report (1932), Commissioner of Correction, p. 134.

1932

Superior Courts — Larceny Appeals.

Total appeals			810	100.0%
Total convictions		503 (100.0%)		62.1%
On file after conviction	103	(20.5%)		
Probation	108	(21.4%)		
Sentence	242 (100.0%)	(48.1%)		
Fines	45	(18.6%)		
Imprisonment	197	(81.4%)		
Pending for sentence	50	(9.9%)		
Pending untried, end of year		136		16.7%
Acquitted		78		9.6%
Dismissed		88		10.8%
Defendants not arrested		5		.6%

(Pending untried, beginning of the year, 86.)

From Statistics of Criminal Prosecutions in the Superior Courts for 1932, Table 91, Annual Report (1932), Commissioner of Correction, p. 115.

Illicit Sale of Liquor.

Places selling intoxicating liquor became more numerous as public opinion became more definitely crystalized against the 18th Amendment of the Federal Constitution. The fact is that "speakeasies" have not seriously offended the sensibilities of many of our citizens. There has been an attitude of toleration toward them, and this attitude has had its effect upon those engaged in law enforcement. Raids upon such places by the police departments in our larger cities, never very numerous, gradually have diminished almost to the vanishing point. As a result of this attitude on the part of a large portion of the public and of the police, the activities of those engaged in the importation and sale of intoxicating liquor in violation of law became bolder and more defiant. This not only resulted in the development of this illegal business to huge proportions, but it also contributed to the rise and development of other illicit businesses and activities.

An unparalleled temptation to corrupt relations between those engaged in the traffic and law enforcement officials has been the consequence. The business was outside of the pale of the law. The owner knew this and so did the police, and the public was neutral. In such a situation a police officer could safely demand tribute from a speakeasy proprietor as a condition of the continuance of the latter's business. If the protection money was paid, the business could be let alone, and the public had little interest in this circumstance. If money were not paid, the enterprise could be raided and put out of business as the law required.

If the officer whose protection was purchased were in a position of authority over others, the demoralization of his subordinates was inevitable. Evidence was presented to the Commission of instances in which patrolmen who had been faithful in the performance of their duty to prevent violations of the law had been transferred apparently for no other reason than that they were interfering with the conduct of the illegitimate liquor traffic.

There was also evidence that the influence of the illegitimate liquor dealer has reached out into politics and has become a factor of serious proportion in the election of public officials. This influence has had the effect in many instances of seriously embarrassing honest and capable police executives. Supervision and control of vice squads have been taken out of the hands of the chief of police, and the control of the police department has found lodgment elsewhere than in the hands of the responsible officers of the department.

Mention has been made of the proportions to which this illegal traffic has grown, and it may be appropriate that the Commission report briefly the facts touching the volume of this business in the Commonwealth.

One large liquor group operating in the eastern portion of the Commonwealth has offices located in different cities in that portion of the State. A raid upon one of the main offices revealed some liquor, several revolvers, binoculars such as are used upon vessels, and records relating to the smuggling of liquor. This group was organized in the latter part of 1924; it became the dominant factor in the liquor traffic in and around Boston about the year 1931. It purchases its main supply from distillers in Canada. The liquor is brought from Canada in vessels owned by the group to positions off our own coast. The group owns three ocean-going vessels, each with capacity of 2,500 to 4,000 cases of liquor. On the arrival of a vessel off the Massachusetts coast, the off-shore vessel communicates by radio with a shore station which instructs the vessel where it is to meet a contact boat. At the same time the off-shore vessel is given an alternative point of meeting the contact boat in case the movements of the latter are detected by law enforcement officers. After the contact boat leaves its base the radio station informs the captain of the off-shore vessel, or supply boat, as to the place where he is to meet the contact boat, and gives instructions as to the kind and quantity of liquor which is to be delivered to the contact boat.

The landing places are known as "drops," and each is designated by a number. This group has at least a dozen regular landing places. The load is transported from one of these landing places, usually by light trucks, to a place of storage, from which the liquor is conveyed by large trucks or vans, often bearing signs indicating legitimate businesses, to depots known as "hides." This system apparently is adopted in order to diminish the loss in case of a raid. Distribution is made from the "hides" to the customers.

A complete inventory is kept in the main offices of the kind and quantity of liquor in each of the "hides," and the delivery men consequently always know what stock there is on hand. Payment is made usually in cash, though credit is also granted, and there is evidence that the amount of credit sometimes runs into substantial figures.

The activities of this group are not confined entirely to the distribution of liquor in this locality. It also makes wholesale deliveries to large cities in other States, as far west as Detroit, and serves as a distributor of liquor for other gangs.

This group owns several contact boats with bases in Massachusetts. There was evidence that the group paid for repairs, gas and oil for the operation of these boats in a period of approximately three months the sum of $20,750, and that during the same period it paid for wages the sum of over $40,000. There was also evidence that in a period of substantially four months over $32,000 was paid for labor in landing liquor.

The evidence further indicates that the business of this organization has shown a consistent profit over a period of years. Profits were made in all but two months; the losses in those two months were caused by heavy seizures of liquor, automobiles and boats. The business has greatly increased since 1930, when New York interests became financially interested in this organization. Evidence of the sales of Canadian liquor alone for a period of six months, beginning in September, 1931, shows a

total of approximately $612,000, with expenses of operation amounting to approximately $338,000, leaving a profit for the period of approximately $274,000, or an average profit for six months of almost $50,000 a month on a single branch of the business.

This organization also dealt extensively in alcohol, and there is evidence that the business in this commodity amounted to an average of approximately 10,000 gallons a week. While the information in our possession is not sufficient to warrant a positive statement, it indicates that the illicit liquor business done by this organization for the year 1932 exceeded 45,000 cases of Canadian liquor and 500,000 gallons of alcohol. The valuation of the liquor smuggled from Canada exceeded $1,800,000, and that of the alcohol was of an equal amount, so that the total sales valuation of the foreign liquor and of the alcohol (most of which was manufactured in this country) amounted to over $3,600,000.

In southeastern Massachusetts and on Cape Cod there are some areas in which a single individual enjoys exclusive landing rights, while other portions of this part of the State are recognized as common territory in which several independent operators ply their trade.

In many cities speakeasies, gambling joints and night clubs are numerous, and their existence and situations must be known to the police. In some instances lists of these illegal enterprises in the possession of the Commission were verified, at least in part, by responsible police officials who were called into conference with the Commission. When inquiry was made by the Commission why this state of things was permitted to exist, the usual response was that the police officials were not given a free hand but were controlled by political influence and authority, or that public sentiment was not in favor of restraining the activity of speakeasies.

It is not possible within the scope of this report to discuss in detail the physical conditions surrounding speakeasies in various parts of the Commonwealth. Those in Boston may be taken as types. In that city

there are many small speakeasies, which need not be described. The large speakeasies may be divided into two classes,— those which cater to members of the public who pass the scrutiny of a doorkeeper, and those operating under a club charter which are supposed to be open only to members of the chartered organization. All large speakeasies are protected from police interference by barricaded doors and other devices. These doors are of solid metal of the grill type or are reinforced with metal. We believe that the police authorities must be aware of the location and the illicit character of the business of these places. Notwithstanding this, there has been comparatively little effort to prevent their continuance. Such effort as has been made has usually been through the instrument of the raid, a method which has proved in a large number of cases to be inefficient. Raids have been inefficient because the illegal establishments are so strongly protected that by the time the police are able to break in, those in charge of the establishment are able to get rid of the liquor; furthermore, there is reasonable cause to believe that in many cases the proprietors have been forewarned of the raid. These places cater in many instances to the general public, and it would seem that it should be a comparatively easy matter for the police to obtain evidence of their illegal operation otherwise than by the raid.

There are approximately twenty-five of the "club speakeasies" in operation in Boston. One of these clubs has a membership of 6,600; it employs 70 persons and sometimes has an attendance of over 500 people. An officer of this club admitted to us that the club was selling liquor in violation of law. Many of these clubs are equipped with bars and have bartenders in their regular employment. It has been impossible to determine the amount of the business done, but we believe that in some instances the volume runs into several thousand dollars a week. Slot machines are generally a part of the paraphernalia of these clubs. In some of them women of low moral character ply their trade. The location of the clubs and the personnel of their incorporators are matters

of public record on file in the office of the Secretary of the Commonwealth. Police officials have claimed they have no right to enter these premises. It is difficult to understand this attitude. If these places are used for the purpose of distributing liquor illegally, even though only to their members, they are common nuisances. A sale of intoxicating liquor by a corporation to its members is just as illegal as a sale by one individual to another. It is apparent, however, that many of these places are operating not for the sale of liquor to their members alone, but for the sale of intoxicating liquors to members of the general public. It seems to us that there is no justification for the attitude that because the enterprise is a chartered club it has some sort of a constitutional right to sell intoxicating liquor in violation of law. It further seems to us that evidence could easily be secured of the common and persistent violation of the law by these organizations.

It would present a false aspect to the matter if we were to give the impression that this condition is confined to the city of Boston. What has been said in reference to conditions in this city could be said with equal justification with reference to several other cities of the Commonwealth. It is speaking well within the facts to say that illegal traffic in liquor, by importation or "rum-running," by sale in speakeasies and clubs, and by bootleggers, has been prevalent in almost every part of the Commonwealth, and that this business runs into huge proportions. It has been one of the principal industries of the Commonwealth. The most serious aspect of the matter is that the business of violation of the liquor laws has brought other criminal conduct in its train. The speakeasy is not only the dispenser of liquor, but it is frequently the gambling place and the headquarters and breeding ground of the gang. It is also a reasonable certainty that the speakeasy has exerted a corrupt financial influence upon law enforcement agencies, and that there has been affiliation and association between those engaged in the illicit traffic and political office holders and candidates.

Shoplifters.

The professional shoplifter is an habitual criminal. Professional shoplifters operate in various ways but invariably employ skilled methods. Sometimes they make use of younger confederates. They have all the outward appearances of women of culture and wealth. They are bold, deliberate and daring, and are difficult to apprehend. None of these professional shoplifters displays alarm if they become the object of suspicion. They attempt to leave the store quietly, usually first going upstairs or to some other part of the store. These professionals are known to the store police forces. One of our large department stores reports that the average loss from store thefts is approximately one-quarter of a million dollars ($250,000) annually.

These professional shoplifters have "fences" through whom they dispose of their loot. Recently a large theft of lingerie was traced from a Boston house to a store in Miami, and it was found that the principal stock in this store consisted of apparel of this kind which had been stolen from Boston department stores.

We find that the store detectives are well trained and proficient in their work. There is a central organization maintained, where the records of the various store thieves are indexed and available for use. In some of the large stores photographs and fingerprints of the principal shoplifters are on file, and the employees are shown the photographs of these thieves so that they may issue a warning when a professional enters the store.

The tendency of the shoplifter to continue in her criminal career is illustrated by the record of the following store thief:

Date.	Offence.	Court.	Disposition.
April 8, 1908	Larceny . . .	East Boston . .	Probation.
June 10, 1910	Assault and battery .	East Boston . .	On file.
June 10, 1910	- - -	East Boston . .	Industrial School for Girls.

Date.	Offence.	Court.	Disposition.
Nov. 14, 1912	Larceny . . .	East Boston . .	Reformatory for Women. Released Oct. 8, 1913.
Sept. 24, 1914	Larceny . . .	Boston Municipal .	Reformatory for Women.
Oct. 15, 1914	Larceny . . .	Boston Municipal .	On file.
June 30, 1916	Larceny . . .	Boston Municipal .	Dismissed for want of prosecution. Returned to Reformatory for Women. Released Sept. 21, 1916.
Jan. 13, 1920	Larceny . . .	Boston Municipal .	Defaulted.
Feb. 12, 1920	Larceny . . .	Boston Municipal .	Default removed. On file.
March 18, 1920	Shoplifting . . .	Philadelphia, Pa. .	Defaulted. On file.
April 20, 1920	Larceny . . .	Boston Municipal .	On file.
April 20, 1920	Court default, larceny	Boston Municipal .	On file. Returned to Reformatory for Women.
Aug. 15, 1923	Violation auto law .	Roxbury . . .	$5 paid.
Oct. 11, 1923	Larceny . . .	Boston Municipal .	Defaulted.
Oct. 11, 1923	Larceny, court default	Boston Municipal .	Reformatory for Women. Appealed.
Nov. 11, 1923	Fornication . . .	Boston Municipal .	$10 paid.
March 14, 1924	Larceny . . .	Suffolk Superior .	Filed until re-arrest.
May 21, 1924	Larceny . . .	Suffolk Superior .	Continued to Nov. 20, 1924.
Nov. 20, 1924	Larceny . . .	Suffolk Superior .	On file.
Jan. 16, 1925	Concealing leased property.	Boston Municipal .	1 month jail. Appealed.
May 18, 1925	Concealing leased property.	Suffolk Superior .	On file, full restitution made
Dec. 24, 1925	Suspicious person .	Roxbury Court . .	Dismissed — later indicted by grand jury.
Jan. –, 1926	Conspiracy . . .	Suffolk Superior .	Indictment.
Jan. –, 1926	Receiving stolen goods	Suffolk Superior .	Indictment.
Jan. –, 1926	Lewd and lascivious cohabitation.	Suffolk Superior .	Indictment.
March –, 1926	Larceny . . .	Suffolk Superior .	Indictment.
July 7, 1926	Receiving stolen goods	Suffolk Superior .	2 years jail in Berkshir County.
July 7, 1926	Receiving stolen goods	Suffolk Superior .	On file.
July 7, 1926	Conspiracy, 2 counts .	Suffolk Superior .	On file.
July 7, 1926	Larceny . . .	Suffolk Superior .	On file.
July 7, 1926	Lewd and lascivious cohabitation.	Suffolk Superior .	On file.
Nov. 25, 1930	Larceny . . .	Suffolk Superior .	Indictment.
Nov. 25, 1930	Conspiracy to steal .	Suffolk Superior .	Indictment.
Nov. 25, 1930	Receiving stolen goods	Suffolk Superior .	Indictment.
Jan. 12, 1931	Larceny . . .	Suffolk Superior .	No bill.
Feb. 17, 1931	Larceny, 6 counts .	Suffolk Superior .	1 year jail.
Feb. 17, 1931	Conspiracy . . .	Suffolk Superior .	1 year jail.
Dec. 27, 1932	Violation auto law .	Boston Municipal .	$5.
May 25, 1933	Larceny . . .	Roxbury Court . .	Not guilty, May 31, 1933.
May 25, 1933	Receiving stolen goods	Roxbury Court . .	Not guilty, May 31, 1933.

Last spring a notorious shoplifter was apprehended in Boston. Although her photograph and finger prints were on file at police headquarters they were not available at the time she was apprehended, and she was thereby enabled to give an assumed name and to procure her freedom on bail in the sum of $100. She then disappeared. The record of this individual is as follows:

Date.	Offence.	Court.	Disposition.
March 23, 1911	Grand larceny	New York City	1 to 2 years.
May 2, 1911	Larceny, pickpocket	Chicago, Ill.	No disposition.
Dec. 23, 1911	Grand larceny	Washington, D. C.	Probation.
May 13, 1915	Larceny	Boston Municipal	Filed and turned over to Washington, D. C., police.
May 4, 1917	Larceny	Newark, N. J.	3 years.
Oct. 12, 1917	Larceny	New York City	Probation.
July 15, 1919	Larceny	Boston Municipal	6 months house of correction. Appealed.
Nov. 5, 1919	Larceny	Suffolk Superior	Nol pros Superior Court. Charge of vagrancy dismissed.
Oct. 24, 1919	Larceny	New York City	No disposition.
Jan. 29, 1920	Larceny (shoplifting)	Philadelphia, Pa.	Disposition not given.
March 18, 1920	Larceny	Boston Municipal	2 years house of correction. Appealed.
March 18, 1920	Vagrancy	Boston Municipal	Filed.
May 18, 1923	Larceny	Suffolk Superior	Filed.
June 30, 1933	Larceny from person	Boston Municipal	Defaulted, July 3, 1933.
July 1, 1933	Larceny handbag	Philadelphia, Pa.	

Last summer one of these shoplifters appealed from a sentence of the Boston Municipal Court. After a partial trial in the Superior Court she pleaded guilty to two counts charging larceny, and was fined $50 on each count, although one of the counts alleged theft of goods to the value of $200.

Of course a distinction ought to be made between those cases where a person is guilty of stealing inexpensive articles for her own personal wear or that of her family, and cases of frequent offenders who are members of an organization which is supported and maintained by stores whose principal stock in trade consists of stolen goods.

The penalties which have heretofore been imposed on this latter class of criminals have been far too light. Wholesale thieving of valuable articles on a commercial basis ought to be dealt with more severely by our courts.

Narcotics.

The traffic in narcotics is still a serious problem; it is estimated that there are in Boston 600 to 700 drug addicts, each of whom spend at the rate of $6 to $8 a day to obtain the drugs required to satisfy their cravings. Inasmuch as practically none of these unfortunates are willing or able to work for a living, they turn to shoplifting, larceny and other forms of criminal conduct.

During the last fifteen months there have been an unusually large number of convictions on drug charges in the Greater Boston courts; but whether this is evidence of an increasing use of drugs by addicts, or a more vigorous prosecution by the authorities, we are not in a position to say.

A serious apprehension is felt by those engaged in the regulation of the narcotic traffic that the repeal of the prohibition amendment will draw the well-organized gangs and syndicates of rum smugglers and distributors into the narcotic field. Within a year the agents of the Federal Narcotic Bureau obtained a conviction for wholesale narcotic sales against a well-known bootlegger, who had previously operated on a large scale in the smuggling of liquor. He said he believed that large profits from the illicit liquor business were a thing of the past, and that he had to have some way to keep his boats, trucks and well-organized gang employed. He chose the drug traffic. It is probable that other illicit liquor dealers will take the same course. The possibilities for making great profit in this traffic is shown by one case in which we have received evidence. A notorious bootlegger, now a wholesaler of narcotics, recently purchased 100 ounces of heroin costing at the time approximately $1,500. Before it reached the addict, this same heroin would pass through the hands of

various distributors and pedlars, each one of whom would "cut" it by the addition of sugar of milk. At current retail prices it is estimated that the aggregate cost to the addicts for this adulterated heroin would be $43,000.

By reason of the fact that a quantity of drugs of great value has little bulk, the detection and apprehension of the drug pedlar and wholesale distributor can be accomplished only by trained specialists. At present the agents of the Federal Bureau of Narcotics do most of the work on the drug traffic in Massachusetts. There are ten Federal agents in the State, most of whom centralize their activities in Greater Boston. We recommend that the State organize a Narcotic Unit, of not less than ten men, to be engaged exclusively in the field of narcotics. Many other States have such a unit with resulting benefits. The Boston police department has only one man assigned to this work.

The statutes in this State regulating the use and sale of narcotics and drugs are contained in chapter 94 of the General Laws. The Federal Bureau of Narcotics has submitted to us the following schedule of alleged defects and inadequacies in this chapter:

There is no requirement that prescriptions shall be issued, or narcotic drugs distributed, "in the course of professional practice only," relieving physicians, dentists and veterinarians from liability, no matter what amount is prescribed or distributed.

Preparations "*prepared* for external use only" are exempted, whether they may be used safely internally or not. The Uniform Act only exempts preparations "susceptible of external use only."

There is no provision for legal possession of narcotic drugs by masters of ships or of airplanes, making such possession illegal under Massachusetts law although permitted by Federal law.

Section 212 requires proof of unlawful intent to sell narcotic drugs before the penalty for illegal possession may be imposed. Intent is difficult, if not impossible, to prove.

Section 201 authorizes the sale of narcotic drugs by physicians, dentists, veterinarians and registered pharmacists to each other. It also authorizes them to sell to incorporated hospitals, colleges and scientific institutions. Both of these provisions are in direct conflict with the Federal law.

Section 203 exempts lawful possession by common carriers but fails to exempt lawful possession by warehousemen, public officers, the temporary incidental possession of employees or agents of persons lawfully entitled to possession, and of persons whose possession is for the purpose of aiding public officers in performing their official duties.

Section 18 provides for revocation of physicians' certificates only if such persons are intemperate in the use of narcotic drugs, and not if they are guilty of unlawful sales.

Section 214 specifically provides for the seizure of drugs held by masters of ships or officers in charge of airplanes and the arrest of all persons present where such drugs are found, by failing to exempt these two classes.

Sections 214 and 216, so far as they refer to synthetic drugs, are insufficient to meet the needs as shown by the Uniform Act.

The forging of prescriptions for narcotic drugs is not specifically covered in the present law.

The present law does not provide for control of the cultivation and growth of narcotic drugs, a matter solely within the power of the States.

It does not provide for the licensing of manufacturers and wholesalers, to whom the government may not refuse registration, although they may have violated the very law under which they seek registration. The refusal of a license by a State will justify refusal of registration by the Federal government.

It does not require the return of the unused portion of a narcotic drug when no longer required by the patient, nor that exempt preparations shall contain "not more than one of the drugs named" in the law.

It does not require that exempt preparations containing a narcotic drug shall contain some other drug of medicinal value, making it possible to sell morphine and water as a medicinal preparation, nor does it restrict the amount of exempt preparations that may be sold to any one person within a given length of time; nor does it require a record of drugs seized and destroyed to be forwarded to the Commissioner of Narcotics, although an international treaty requires that such a report be made by him, covering all drugs destroyed in the United States.

We recommend that these defects be remedied by the repeal of the present statutory provisions, and the enactment in their place of the Uniform Narcotic Drug Act as approved October 8, 1932, by the National Conference of Commissioners on Uniform State Laws.

We are informed that all persons convicted for the first time of drug addiction in United States courts are segregated at one institution, where scientific treatment is given them. Massachusetts has no special institution equipped for this purpose. We believe that there should be such an institution in this Commonwealth. The incarceration of a drug addict is of no permanent benefit to him or to the community unless when released the treatment given him has resulted in his cure.

Houses of Ill Fame.

Houses of ill fame exist in many of the cities of the Commonwealth, though probably in no larger numbers than what may be called usual. In Boston there are some established places of this nature which are open to the general public. In this city, as in most large communities, there are also private apartments which are used more or less for immoral purposes. They are, however, comparatively few in number and each one is resorted to only by a few persons. The extent of the activities of such places hardly permits them being classed as a business. From outward appearances there is nothing to indicate the purpose for which they are occasionally used, and in that sense they do not constitute any public scandal.

There was evidence before us of a few regular establishments, kept in various cities, usually by people known to the police from their persistent violations of the law governing such places, although the police did not agree that their business was as extensive as had been reported to us. In some of these establishments the inmates are supplied for a certain period of time when they are supplanted by others, and in this way the police see but little of them. They seldom go out, and their stay in any particular place is too short for anybody to gain their confidence and thereby get an insight into the system under which they are working.

These are called "chain houses," and they operate on so-called "circuits," — the Bridgeport circuit, the Providence circuit, the Hartford circuit, the New York circuit. Outside of furnishing the inmates and exacting a certain price per capita during their stay, the circuit organization seems to have nothing to do with the operation of individual establishments. This mode of operation is the only evidence we have secured to show that this business is organized.

We believe that such of these establishments as do exist are comparatively free from the direct control of important underworld criminals. The amount of the profits is apparently too small to attract their activities, and they turn to more profitable ventures. Some of the proprietors of these places are acquainted with characters engaged in other illegal ventures and perhaps have their friendship, but there appears to have been no direct connection between them in the past in so far as the conduct of houses of the kind in question is concerned.

The more important aspect of the enterprise of conducting houses of ill fame is the possible development of it as an organized activity of large proportions if professional criminals turn in this direction when their present illegal enterprises, such as the importation and sale of liquor, become unprofitable. Reference has hereinbefore been made that there is a body of opinion that there may be such a development of organized professional criminal

activity. There is no necessity, so far as the Commission sees it, of additional legislation. We do, however, feel that careful scrutiny ought to be had of the houses of ill fame, particularly in the period immediately following the repeal of the prohibition amendment. It ought to be much easier to prevent the suggested development than it would be to eradicate the evil after professional criminals have become organized with respect to this illegal enterprise. The attention of police authorities should be carefully centered upon any efforts which may indicate the intrusion of the organized gang into this field.

Lotteries.

There are districts in this State where lotteries are maintained as extensively and almost as openly as theatres, and where it is almost as easy to buy a policy slip as it is to purchase a theatre ticket.

In one of our large cities there are about fifty principals, sometimes called "backers," engaged in the promotion of lotteries. Each principal employs various agents, or "pick-up" men, for the sale and distribution of lottery slips. These agents are paid a fixed compensation or a percentage on their sales. Sometimes this agent sells tickets himself, but usually he organizes a sales staff and employs the keepers of stores, restaurants and barber shops as his distributors. The actual sellers of lottery tickets are known as "bookies," and they are usually paid a certain percentage on their sales, commonly 20 per cent. The winner of any capital lottery prize is expected to pay 10 per cent to the person from whom he secured his ticket.

The principals have certain districts in which they have practically exclusive control over the sales of lottery tickets. The invasion of outside promoters is prevented by threats of violence. This business is conducted upon a large scale, and with comparatively little interference from the authorities. Occasionally one of the "bookies" is apprehended and fined, but rarely is a principal prosecuted. In one Massachusetts city we believe that there

are at least 2,500 persons engaged principally or incidentally in the sale of lottery tickets.

The common form of lottery is based upon certain numbers that are printed regularly in newspapers, such as treasury balances, the number of shares traded in on the New York or the Boston Stock Exchange, and the mutuel figures for horse races. Some of the "bookies" have a regular trade and can closely average their daily receipts. One who operates in one of our best-known public buildings sells about $150 worth of tickets a day. We have seen some of these tickets. They are pieces of blank paper having a number and the date indicating when the lottery is to be decided. This sort of lottery requires no printed tickets; the "bookies" use pieces of blank paper upon which they write out in duplicate the number selected by the customer and the date when the winner is to be decided. The customer keeps one slip; the duplicate slip, together with the money, is then turned over by the "bookie" to his agent, who makes his returns to the principal.

At a meeting held last year at a Boston hotel, a score of the principals conducting the lotteries in Boston met for the purpose of establishing a better working agreement between them, and to reduce the odds for first prize in these lotteries from 600 to 1 to 550 to 1; 550 to 1 is now the prevailing ratio, except in one large group which still operates extensively in Boston upon the former percentage. It was also the object of this meeting to see if the principals would not contribute a certain percentage of their receipts in order to maintain an organization to act as a supervisory board over all lottery operations in the city.

In the main, and throughout the Commonwealth where lottery tickets are sold extensively, it appears that the lottery business of certain districts is allocated to certain individuals or organizations. There are a few exceptions to this rule, where independent agents have for years been selling tickets in well-established pools and are permitted to continue their business free from inter-

ference by those having control of the lottery business in the particular district.

It is only natural that such an illegal venture entailing the payment in case of such large amounts of money has proved attractive to those criminally inclined. The great odds against winning a prize makes large profits inevitable, and in the main these profits go to the underworld. The representatives of the underworld conduct and control the lottery situation in this Commonwealth, and there is reason to believe that their control has been enforced by violence and even by murder and has received police protection.

The Commission sees no need for additional legislation for the control of these unlawful gambling enterprises. The conditions we have described are due not to a lack of sufficient law, but to a failure to enforce the law we have.

The Commission does not feel that it is within its province to make any recommendation relative to the legalizing of some form of gambling as an outlet of a normal, human instinct. The experience of other States has tended to indicate what might be assumed as a matter of reasoning, — that if there were some form of gambling under state control, such, for example, as legalized wagers on horse races, it might be expected that the illicit gambling which goes on today might more successfully be curtailed; that the widespread human tendency to make a wager on something or other would find an outlet; and that some of the resistance to the enforcement of the law against other forms of gambling would be dispelled.

New Hampshire legalized the pari-mutuel system of betting on horse racing in 1932. The system was a novelty to the people in this section of the country, although it had been in use for years in other States. The basic idea of pari-mutuel betting is that all the money wagered on a given race is put into a pool; after deduction of a fixed amount for the operators of the track and of the taxes due to the State, the entire pool is divided proportionately among those who have placed successful wagers. The

method of receiving wagers, tabulating odds, and paying off the winners is almost mechanically perfect, assuring all who make wagers of an honest chance. Close supervision of accounting is had by the State, which receives as a tax a fixed percentage of the amount of each pool. It was estimated that last summer 90 per cent of the persons who went to the Rockingham races came from this State. During the fifty-nine days of the three meets more than $600,000 was spent for admissions, and more than $12,500,000 was wagered. By far the greater part of these amounts came from the citizens of Massachusetts, and the State of New Hampshire benefited therefrom to the extent of $433,935.99 in taxes.

It is undeniable that a very large number of our citizens have an instinctive desire to wager and to experience the accompanying thrill of uncertainty. Every day throughout this Commonwealth thousands of dollars are wagered in "nigger pools," which are operated by leading figures of the underworld. Large amounts of money are paid each year for "sweepstake" tickets on foreign horse races by our citizens. These wagers are made by practically every class of our citizens.

Slot Machines.

Within the last few years gambling machines of various kinds have been installed in clubs, speakeasies, restaurants, barber shops, drug stores, and even in the small neighborhood stores. Some of these are "money machines," arranged for the reception of coins of various denominations and giving the player either nothing or a certain number of coins. Other machines give the player a small package of candy mints and sometimes also give him "slugs" which may be either used for further play or redeemed with the storekeeper for merchandise or for cash. A recent type of machine distributes a roll of mints and sometimes also gives the player "slugs" which have no cash value, but may be deposited in the machine for the purpose of permitting the holder to play "baseball." This last-mentioned machine has a mechanical arrange-

ment whereby the money deposited goes to one compartment and the slugs to another, but this arrangement can be easily changed so that at times coins will go into the slug compartment and slugs into the coin compartment; the machine will then at times give out nickels on a successful play. The money machines, sometimes called "jack-pot" machines, are, of course, gambling devices. The usual type of candy selling machines, which give out slugs which permit the player to again operate the machine and thereby secure more candy and perhaps more slugs, has also been held to be a gambling machine.

One distributing company has 235 of the "baseball" type of machines in use in eastern Massachusetts, of which approximately 120 are installed in Boston. They are leased to storekeepers on a percentage basis. This company furnishes the storekeeper with the candy for these machines without charge. The proceeds from this type of machine are divided as follows: 40 per cent to the storekeeper, 15 per cent to the salesman who installed machine, 30¾ per cent to the candy manufacturer, and 14¼ per cent to the owner of the machine. These machines being "nickel" machines, it will be seen that the candy costs only 1½ cents a roll. This company regularly employs six or seven persons, and, we are informed, had a profit last year of $38,150. This is the largest company located in Boston. A concern situated in Cambridge does a still larger business.

Most of the machines in use in Massachusetts come from two manufacturers in Chicago and one in New York. If some of the machines furnished are seized and forfeited, the remaining machines of that type are returned by the storekeepers, and the manufacturer then supplies a new type of machine.

An investigation of the slot machines in Boston discloses that there are approximately 1,000 slot machines in use in that city. There are three different distributing concerns for these machines located in Boston. In one Boston police division, according to a list received by us, there are 85 slot machines. In Worcester there are two

principal distributors of slot machines. They are large operators, but we have been unable to get sufficiently definite information to warrant a close approximation as to the volume of business done by them. The use of these slot machines also occurs in Lowell, Lawrence, and in other cities in this State.

Rival gangs in some communities are said to have been engaged in hi-jacking these machines. Some operators now protect their machines by a steel jacket which entirely covers the machine when it is not in use and which is firmly attached to the realty. The profits derived from the operation of these machines are large enough to attract the activity of professional criminals. Various tests have been made on different types of machines to see what chance the player has of being successful. In one test 750 slugs were used, and play was continued until no slugs were left. At five cents apiece, these slugs would represent an outlay of $37.50. Approximately 1,800 plays were made, using not only the original 750 slugs but also all slugs won during the course of play. The "jack-pot" was won only upon two occasions, and at no time during this long series of plays was the player ahead of the game. At the end he had nothing. Another type of machine was tested with 1,000 slugs and showed that only 756 slugs were obtained by using 1,000 slugs in this machine. From actual tests it would appear that the chance of winning the "jack-pot" in the ordinary machine is about 1 in 900.

Adjustments can be made easily on certain types of machines so that the player has practically no chance of winning if he makes any large number of plays. No one can hope to win in any type of these machines if he continues playing for an appreciable length of time. Of course, occasionally one can play and secure the "jack-pot" or another prize in a money machine, or a number of slugs in the candy type of machine, but these are only isolated occasions and are simply bait for further play.

One feature of this enterprise is of serious import. Children are allowed to play these slot machines, and they soon become habitual players. Of course, children can

have no better luck than adults, and in the end their cash goes into the coffers of the slot machine operators. The operation of these machines by adults is bad enough, considering the volume to which the business has grown, but it is infinitely worse to arouse gambling instincts in young children and to victimize them by a machine which cannot be beaten.

There is a great diversity in the decisions of District Court judges as to what is necessary to make out a *prima facie* case in the prosecution of slot machine cases. We are informed that some judges decline to convict upon uncontradicted evidence showing the manner of operation of these gambling devices, and in some cases with the very machine which has been seized. If the machine gives out slugs, some courts refuse to convict unless the slugs have been actually redeemed in cash or goods by the storekeeper. But even if the slugs are not so redeemable, the number of slugs obtained in no way depends upon the skill of the operator but entirely upon the automatic operation of a mechanical device which is built and contrived to operate against the player's chances. Where the necessary result of the playing of any machine rests entirely upon chance, it would seem that the setting up and maintaining of such a machine for public use ought to be held to be within the sweep of the statute and to constitute an offence. In the interests of uniformity of decisions by district courts, a new section should be added to the gaming laws providing that the possession of any mechanical device set up and ready for public play, which gives the players money, goods or anything of value in varying amounts, the result depending entirely on chance, constitutes an offence.

The money seized in these machines should be held to be a gambling implement, and should be forfeited just as the rest of the gambling implements are forfeited. Within the last few months the Superior Court ordered the return of $7,290.60 which had been seized in a gambling raid. We suggest an amendment to the present statute, providing that all money seized which has been used in gambling shall be forfeited.

Search warrants in all gambling cases should permit the designated officer to seize, hold and remove contraband goods.

As in the case of the speakeasy, a serious phase of the business of the slot machine is the apparent connection between the operators and some public officials. The prevalence of the machines and the openness with which they are operated cannot in all instances be attributed to mere inertia or inefficiency. The whole business with its various ramifications has had a demoralizing effect, and undoubtedly has contributed materially to the financial resources of the professional criminals. (See Appendices A and B.)

PART III.

RECOMMENDATIONS RELATING TO LAW ENFORCEMENT AGENCIES.

We submit herein recommendations relating to police systems, prosecuting officers and certain courts.

Police.

In common with other States of the Union, Massachusetts stands in need today of the highest type of police service. A list of reported crimes taken from the public press from all parts of the State indicates that we are afflicted with the typical crimes of America, — gang murders, and other incidents of racketeering activities, various forms of robberies, from the pay-roll robbery to the "rolling" of drunks, the usual forms of burglaries, larcenies, and sex crimes, blackmail, arson, counterfeiting, bad check passing, drug selling, etc.

These crimes are committed by various types of criminals. Some are the work of juveniles, taking their first steps in crime. Others are the work of occasional offenders driven to crime by one motive or another. But the more serious criminality is the work of habitual and professional criminals. In many cases these criminals have combined themselves into gangs in which case they become an even more dangerous menace than when acting individually.

The danger from criminals is increased by the fact that the modern professional criminal uses every mechanical means to aid him in carrying on his work. The automobile is in constant use by criminals, increasing their mobility and the range of their depredations, and making it possible for them to make quick get-aways. In the Sommer case the automobile used by the bandits was so equipped that it could start immediately at high speed.

The danger from these criminals is also increased by the fact that they are usually well armed, employing not only the commonplace revolver, but sometimes even the deadly machine-gun.

With its large population, including one of the largest urban areas in the country, Massachusetts has a very serious problem of adequate police protection to life and property. To cope with this problem requires police work of a high order of intelligence. It requires a well-disciplined body of men of unquestioned honor and integrity who have been trained to the difficult job of modern police work. It requires a leadership which is alert, intelligent and conscientious, which is thoroughly familiar with all phases of police work, and which has, at the same time, the social vision necessary to adapt police practices to changing community needs. It requires the assistance of all the mechanical and scientific aids to criminal investigation which have been devised both here and abroad in recent years. It requires an organization so flexible and responsive as to be able quickly to mobilize all its resources in an emergency. Finally, it requires a high degree of co-ordination of police forces, so that the entire police power of the State may be used against criminals who commit crimes or take refuge in any part of the State.

Political Interference. — It seems evident that the people of Massachusetts are not getting from the police forces in this Commonwealth that full measure of protection to life and property which they have a right to expect. One reason for this is that in many instances political superiors of police chiefs in Massachusetts prevent the police from proceeding against persons known to be violating the laws of the Commonwealth.

One police head summed up to us the situation as follows:

> The control which special privilege acting through politicians demands, as well as those favors which politicians claim for themselves, is a notorious evil, and is a detriment to fair treatment and honest service in many communities.
>
> In Massachusetts the chief executive of the police department is usually appointed by the Mayor, subject to confirmation by the City

Council or Board of Aldermen. Generally speaking, if such a chief desires to remain in office he is subject to the whims of the Mayor or influential members of the City Council or Board of Aldermen, and even his attempts to maintain discipline are subject to review by those holding elective office. . . .

In cities where the chief is appointed by the Mayor the chief knows perfectly well to whom he owes his appointment. He knows when he accepts office that he must, in the administration of it, yield the interest of the public in the prevention of crime and detection and prosecution of criminals with political alliances to the powerful protection of his own patrons. The chief, being subject to arbitrary dismissal in many cities when by any action he displeases the Mayor or politicians who put him in office, must, if he desires to retain office, necessarily be cautious in the discharge of his duties to heed the admonitions of his patrons.

Testimony heard by the Commission from other heads of police departments tended to confirm this view of conditions in the Commonwealth. The chiefs who came before the Commission generally appeared to be honest and anxious to perform their duties fearlessly and fully if they were permitted to do so. But they gave many illustrations of interference. One chief in a small town said that he had given offence to his board of selectmen by cleaning out the speakeasies in his town, about five years ago. He was ordered not to make any raids again until he first talked it over with the board. Since then, just one raid has been conducted in the town, and that by the State Police, who were successful only in making the speakeasy operate a little less openly. "I have to play the game," this chief said, "to keep my job." He has a family, and needs his job.

We cite this instance because it is typical of a great deal of evidence coming not only from chiefs of police but from other reliable sources. Much of it was given reluctantly, and frequently it was against the interest of the person testifying. We fully appreciate that we have not had the facilities to try individual cases with opportunity to those involved to be heard in their defence so as to enable us to make specific findings. We simply say that we are convinced that political influences are im-

peding police efficiency in this Commonwealth, and that there is enough of it to make it a matter of sober concern.

In many instances, the Commission finds, the chiefs of police have no appointive or disciplinary powers over their forces. In view of the fact that appointments to police departments are often made upon political considerations, it is not surprising to find tie-ups between the political superiors and the subordinates of the chief of police, creating a situation in which the supposedly responsible chief of the force has little power over it.

One chief eligible for retirement refuses to leave the force, hoping that there will be a change in conditions and that he will be able to bring his department up to standard before he lays down the reins. He believes that 90 per cent of his force are honest and are in sympathy with him. It is the other 10 per cent who are the instrumentalities of certain politicians and have brought about almost a complete demoralization of the whole department. Corrective measures cannot be taken against them so long as their official misconduct is sponsored by politicians powerful in the community.

The Commission has received testimony that there is often political interference when disciplinary, departmental or court action is in prospect against policemen who are offenders against the law. Two patrolmen of one large city, accused of robbing a man with whom they had gone on a roadhouse party, immediately got political friends to interfere, first, to prevent the case from coming to court, and then to quash the case before the departmental disciplinary board.

When chiefs are helpless, it is no wonder that misconduct among policemen is to be found. It is significant that we have had evidence of drunkenness of policemen, even in the police stations, of squabbles among policemen, of "wild parties" conducted by certain police organizations, and of maltreating of prisoners. This evidence is symptomatic of a breakdown of morale. Some police officers are said to be in collusion with certain criminal lawyers, so that if a defendant employs a certain

lawyer he is likely to be acquitted. A flagrant instance of this practice was brought to the attention of the Commission. It was one which was thoroughly investigated by a member of the police department who has the proofs in his possession, and concerned a foreign-born restaurant keeper who was caught with a small supply of liquor on his premises. A lawyer appeared in court to represent the defendant, although the defendant had expressly stated that he did not wish to be defended, since he was pleading guilty. Thereafter, the restaurateur, though he did not keep liquor again, was threatened with and actually did suffer raids and arrest because he would not buy his peace.

In the cases of alleged police misconduct brought to our attention, no disciplinary public hearings for investigation of the charges had been held. The United States Department of Justice twice attempted to prosecute policemen in one of the cities of Massachusetts, and both times was thwarted in this effort.

How typical these conditions are of all Massachusetts police departments, or how extensive they are in any one department, the Commission is in no position to determine. But the conditions disclosed by evidence before the Commission, even if they are not typical, are sufficiently serious to require some immediate remedy. Politics-ridden police departments, departments in which chiefs have no real power over their men, departments which contain policemen who consort with criminals and who commit serious breaches of duty without suffering punishment, are no protection against the criminal. It therefore becomes necessary to consider so far as possible what are the present-day deficiencies of police organization and practice and to suggest remedies for them.

Police Leadership. — Under existing conditions, it is exceedingly difficult to get the kind of leadership which police departments must have to function properly. The police chief has no security of tenure. He is subject to removal at the pleasure of the mayor or of the selectmen. With a political overturn, therefore, a new police chief may

be chosen. What this means in the way of political interference has already been stated. Frequent changes in commanding officers of police have further bad results. A police chief requires an intimate understanding of the details of police work, experience in dealing with men, and a thorough knowledge of the locality in which he works. It is difficult for any city or town to find a man with all these qualifications. If an intelligent and honest leader is chosen he may, with increasing experience, develop the qualities necessary for good police leadership. When a new police chief is appointed merely because the political control of a locality has changed, the advantages of the former chief's experience is lost, and another man must be educated in the performance of his duties at the public's expense.

Police Recruiting. — It is of the utmost importance for the efficiency and honesty of any police force that its men be properly chosen and properly trained for police work. At the present time all the cities of Massachusetts and all towns of over 12,000 inhabitants choose their policemen by means of civil service examinations. These examinations test such things as powers of observation, general information, educational equipment, physique and the applicant's knowledge of police practice and procedure. They should be held to lay down minimum standards which an applicant must meet in order to qualify for consideration for appointment as a police officer, and they should not be used, as they seem to be at the present time, as the sole criterion of a man's fitness for appointment.

The most important requirement for a police officer is that he be a man of good character. To ascertain the character of applicants, the Civil Service Commission clears the names of all applicants through the Board of Probation and thus learns whether or not a man has a criminal record. This is apparently as far as the investigation goes. It is not enough that an applicant for police office has no criminal record. His character, habitual modes of conduct, and social attitudes may be such as to make him unfit for police work, even though there is no

record against him in the criminal courts. When a man is appointed to the police force from the certified list of the Civil Service Commission, he is on probation for six months, during which period his police superior can discharge him at any time and for any cause. Many of the police departments do not make a sufficiently rigid investigation into a man's past and his character to determine whether he is the type of individual who should be permanently appointed as a police officer.

Police Training. — Massachusetts, in common with most other States, has been lax in the matter of the training of police recruits. Modern police work requires that even a patrolman have a considerable amount of technical information, be physically equipped to handle himself, and be able to handle his weapons. The more efficient police forces both here and abroad have provided police schools to inculcate into the recruit the essentials of his job. It is unfortunate that the only municipal police school in Massachusetts at the present time is the Boston Police School which was established two years ago. With police schools, a probationary policeman who failed to keep up with the curriculum, and thereby demonstrated his unfitness for police work, could be weeded out at the start. In such schools recruits would be under the eyes of experienced police officers who might determine whether or not the probationers had the aptitude for good police work. The one existing municipal police school in Massachusetts has not made use of the possibilities of such a school in selecting men during their six months' probationary period or in training them for service.

Police Promotions. — Under our present practice, police promotions must be made from among those officers who have passed the civil service promotional examinations. Police chiefs object to this set-up because it gives them too little leeway in the choice of their subordinate officers. They argue that if a police chief is to be responsible for the policing of a city or town, he should have some voice in the selection of his subordinate of-

ficers and should not be compelled to accept men merely because they have been able to satisfy the formal requirements of the Civil Service Commission. There is much to be said in favor of the attitude taken by the police chiefs. The police practice in England and on the continent supports their contention.

It has been argued that to give police chiefs any influence in promotions would open the door to the evils which our civil service laws were intended to eliminate, that with such an influence promotions might be dictated largely by personal and political favoritism. It should be observed, however, that giving some weight to the opinion of superiors in the making of police promotions would not necessarily do away with the requirement of selection from a certified list. We must remember that the existing method of promotion has evidently not provided sufficient guarantee that promotion will be based upon merit alone, and that under the present system police officers commonly feel that faithful performance of duty and meritorious police work are not given due recognition in the making of promotions.

The scope of the present civil service promotional examinations is not adequate; too much emphasis is placed on length of service, and too little is placed upon the character of that service and the opinions of superior officers touching the manner in which an applicant for promotion has performed his duties. If the present system of promotions is to continue, greater value should be given to the past performances of those eligible for promotion and to the recommendations of their superior officers. Promotions should not depend as they do now upon the capacity of a candidate to acquire a book knowledge of matters relating to police activities or an acquaintance with novel methods of "passing" promotional examinations, but should depend, also, upon the applicant's ability to preserve the public peace as demonstrated to his superiors in his actual police work.

Police Communication Systems. — Many Massachusetts police departments are not equipped with the mechanical

aids necessary for good police work. An indispensable requisite for such work today is an adequate communication system. Headquarters must be able to reach the man on the beat with a minimum of difficulty and with a maximum of speed, and the man on the beat must in turn be able to communicate rapidly with headquarters. The communication system must be so devised as to enable a sufficient amount of police strength to be mobilized promptly in an emergency. Good communication systems are also essential for co-ordinating the efforts of different police forces. If an armed gang holds up a bank in one town, other cities and towns along the route of escape should be notified so that immediate steps may be taken to apprehend the criminals.

Modern police science has developed many mechanical aids to these objectives. For interdepartmental communication the teletype service has been found to be practically indispensable. Various methods of radio communication have been devised for communication between headquarters and men in radio-equipped cruising cars. For communication with men on their beats, there are various types of telephonic devices as well as signal light systems.

In Massachusetts the communication systems of police departments are far from satisfactory. Each city and town has gone its own way in installing or failing to install mechanical devices. There are many cities and towns in Massachusetts which are not even equipped with teletype. Some cities and towns have radio and radio cars, and others have not. In many cities and towns the telephonic methods of communication between headquarters and men on the beat are antiquated, and should be replaced by modern methods.

Inadequacy of communication equipment handicaps not only the city in which it exists, but other communities also. A proper communication system is an essential in obtaining quick and efficient co-ordination of the efforts of different police forces to meet a given emergency. Adequate help in an emergency cannot be obtained from a

department which is poorly provided with communication systems, and thereby handicapped in getting information or in transmitting it to its men on duty.

Detectives. — It is doubtful whether detective work in Massachusetts reaches adequate standards of efficiency.

The essentials of a good detective bureau are realized whenever a sufficient number of persons selected for common sense, vigor, integrity and special aptitude are employed under competent supervision to handle the cases necessarily requiring investigation by a headquarters unit. In addition, there must be an identification division using all recognized methods known in the field. Criminal correspondence must be handled with efficient dispatch. The valuable aid of science and experts must be judiciously sought. An adequate reporting system must be provided in order that essential records and executive control may be assured. Suitable equipment must be available and facilities for communication must be swift and sure. Finally, the general plan of structural organization must be such that the work of the detective unit is carefully articulated with that of almost every other portion of the police force. (Chicago Police Problems, p. 119.)

Assignments to detective work in Massachusetts cities and towns, as in most other cities and towns in America, are largely due to political and personal influence.

Since specific capacity for detective work does not necessarily accompany personal influence, the quality of work performed under such circumstances is quite likely to be inferior to that produced by a force of men selected for their relevant qualifications. (Chicago Police Problems, p. 119.)

In Boston at the present time at each police station detectives are detailed from the uniformed force by the captain of the particular division. Their continuance in such work depends upon the pleasure of the captain, who himself may never have had any experience in detective work. Detective officers throughout Massachusetts generally receive little training in the technique of criminal investigation. This is in distinct and unfavorable contrast with conditions in England, and on the continent of Europe, where after being carefully selected, detectives are equally carefully trained. Either they serve an ap-

prenticeship, or they take special courses in detective work at the police school. After appointment to the detective force, there is a probationary period during which the appointee may be dropped at any time upon evidence of unfitness.

There is one other outstanding difficulty with the organization of detective work in Massachusetts. Modern detective work requires the use of all the methods and equipment which modern science has devised, and of men trained to apply and use such methods and equipment. A bureau so equipped and manned is beyond the resources of most of the cities and towns in Massachusetts. When a major crime is committed in one of the smaller communities, the police force goes along as best it may with the facilities at its command in search for the solution. Except for the resources of the State Police, there is no organization upon which any local police force can call for assistance in the investigation of a particular crime.

Lack of Co-ordination of Forces. — As police forces are organized today in Massachusetts, the co-ordination of their activities is dependent upon voluntary arrangements between the police chiefs of neighboring cities and towns. There is no way of compelling co-ordination. Such co-ordination is absolutely essential. Crime knows no boundaries; it flows freely from one community to another. Institutions to combat crime ought to have the same flexibility; but police find themselves handicapped by political boundaries. Within fifteen miles of the State House in Boston, for instance, there are thirteen other cities and twenty-six towns lying in four counties, Suffolk, Essex, Middlesex and Norfolk. Every one of the forty political units making up Greater Boston has its own police force, each responsible to its own political superior. Each city and town has its own standards of police work, and its police force is limited to its own boundaries. If a criminal moves from one jurisdiction into another, an independent organization must be put into motion to apprehend him. The speed and efficiency with which that is done depends upon the methods of communication available and upon the vigor of the

police authority where the criminal has located himself. The results of this situation are notoriously unsatisfactory and are apparently well known to criminals. A member of the police force of one of our smaller cities reported to the Commission that in sections of his town which are sparsely populated and not well patrolled, and which are near the boundaries of other towns, five bodies of murdered men were found. He believed that these murders were committed in other jurisdictions and the bodies thrown over the town line into a jurisdiction where the killers knew that the police were not equipped to cope with the situation.

Remedies. — The abuses existing in police departments, the defects in their organization and equipment, and the methods used for the choice, training and promotion of their personnel, indicate that the cities and towns of this Commonwealth have been unable to provide that standard of police efficiency which is required for the protection of life and property. It seems essential, therefore, for the Commonwealth to intervene, for the protection of life and property is one of the primary functions of a State. By such intervention, police work in Massachusetts could be raised to new levels of efficiency. The Commission does not feel that the scope of the investigation which it has been able to make justifies it in making recommendations in detail for the improvement of our police organizations. We shall, however, state the lines along which we believe Massachusetts police reorganization ought to proceed.

State Detective Bureau. — The trained detective force of the State Police should be entrusted with the power and duty to investigate particular crimes of a serious character or epidemic crime conditions throughout the Commonwealth. Precedents for a centralized detective force to work throughout the State may be found in the older countries. In England, the criminal investigation division of the London Metropolitan Police Force, Scotland Yard, is continually called upon by the local forces for the investigation of the more serious crimes. The local forces in England lack the elaborate set-up which is

maintained by the Metropolitan Police Force, and Scotland Yard has supplied the deficiency. Much of the reputation of Scotland Yard is due to the ability with which it has been able to clear up serious offences in communities outside metropolitan London. The Brigades Mobiles of France, established in 1908, when the French people were awakened to the deficiencies of their local police forces, constitute another precedent for the establishment of a state-wide force for criminal investigation. This force is composed of seventeen corps or brigades stationed in various parts of France, and is made up of men specially trained for work in criminal investigation. It is directly responsible to the Minister of the Interior, a member of the National Cabinet. Whenever a serious crime is committed in a community where local facilities for criminal investigation are inadequate, the officials of the Brigades Mobiles take charge of the investigation. This force has done admirable work clearing up many crimes which otherwise would have remained unsolved because of the lack of sufficient facilities in the local communities.

Central Supervision of Police Forces. — A central police organization, with power to prescribe minimum standards of equipment, qualifications and efficiency to the various municipal and town police departments throughout the Commonwealth, and to supervise such departments in these respects, is imperatively required. A precedent for central supervision of independent local forces is likewise to be found in the older countries. In England, outside of London, the police are controlled by the various local county and borough governments. However, the Home Office, the department for internal affairs in England, has the power to inspect local police forces and to determine whether or not such forces meet specific standards of efficiency. If the Home Office is satisfied with the local department, it defrays part of the cost of the local police administration. This subvention from the Home Office has been a powerful lever in obtaining good standards of police work within the department, and co-operation with all other forces in the country.

The development of central supervision in England arose to combat conditions similar to those in Massachusetts today. In the middle of the nineteenth century England came to the realization that its borough and county police forces were not equal to their tasks. In 1856 an act of Parliament was passed which authorized the Home Secretary to appoint inspectors of the local constabulary. Later, subsidies were granted to communities whose forces were up to the standards set by the Home Office. The Police Act of 1919, the latest enactment dealing with the question of central supervision over local forces, empowered the Home Secretary to make regulations which have the force of statutes in relation to all local police forces. The purpose of this act was to secure uniformity in police pay and conditions of service. The regulations adopted under this act form a comprehensive code governing the various police forces of England in the matters of appointment, promotion, pay, discipline, pensions, etc. These regulations have made it possible to obtain a high degree of uniformity in police service, without impairing the responsibility of the local police authorities. Thus England has satisfactorily settled the problem of central supervision over independent local forces without running counter to the feeling for local "home rule." A similar system might be devised for Massachusetts, whereby local communities would have the assistance of experienced police officers in bringing their forces up to the necessary standard. The English system of granting state subsidies to local police forces which meet the state standards might well be used in this connection.

The Commission is unanimously of the opinion that it is not advisable to leave the sole responsibility for law enforcement to the several heads of the municipal police departments throughout the Commonwealth without any provision for supervision of their work, as it is at present. As we have seen, under our present police organization responsibility is divided, any co-operation and co-ordination which exists is purely voluntary, and in an emergency the efficiency of our law enforcement agencies is no greater than that of the weakest unit. These considerations have

resulted in an opinion, which all the Commissioners share, that there should be some central control of our numerous police departments. Division of opinion exists only as to the extent of that control.

Greater Boston Police Force. — There is opinion in the Commission that there should be a consolidation of all police forces in the metropolitan area of Greater Boston into one unit under the control of a chief to be appointed by the Governor. One advantage of such consolidation would be that it would result in the co-ordination of police activities throughout the Greater Boston area. Such co-ordination would be very desirable because the same criminals doubtless operate throughout Greater Boston. With forty or more independent chiefs of police, co-operation between police forces depends entirely upon voluntary arrangements. The protection of life and property throughout the Boston area should not depend entirely upon the good will of any police chief or of his political superiors; it should be assured by the nature of the police organization itself. If all the police departments of Greater Boston were unified into one force, it would be impossible for a police official in one municipality to refuse to use any of his resources in solving a crime merely because it was committed in another city. Consolidation would also lessen the various forms of political interference with the police. It would be much easier to surround one police force with specific conditions of service and tenure which would tend to eliminate political interference than it is where there are forty different police forces as there are today. Once appointed, the head of the police force in any particular town would be subordinate to the chief of the metropolitan area rather than to boards of selectmen or mayors. He would, in other words, be responsible to a technical rather than to a political superior.

Such a consolidation might also be expected to improve the methods of recruiting and training of policemen. One police school should be established for the entire area, which should be developed to serve as the central training school for policemen throughout the area.

The consolidation would provide various municipalities and towns with well-organized detective services, which they lack at the present time. No one city or town can support the complicated set-up of a modern bureau of criminal investigation and identification, but the metropolitan area could support such a bureau which would serve all its cities and towns. A thoroughly classified index of finger prints, and a well-organized *modus operandi* system would be set up. There would thus be a centralization of all information concerning crimes and criminals in one headquarters to which any local police head could refer. At the present time a town may or may not keep finger-print files, at its own discretion. If one force does use a finger-print system, the information is not available to the police of other towns; if the information is made available, it is not certain that the police in such other towns have the training required to use it effectively.

This consolidation should be achieved by the transfer of administrative powers over the local police forces to an area chief appointed by the Governor. All the police officers and the police chiefs of the various towns and cities in the metropolitan area should be retained in positions of appropriate rank in the new force. The patrol force should also be retained, and there should be no dismissals of either officers or patrolmen except for cause. After such a consolidation of forces, the area chief would make rearrangements of the available man power and equipment so that the police needs of the various communities would be better served.

State-wide Police Control. — There is also opinion in the Commission that any consolidation of control should not be confined to the metropolitan area, but should be extended throughout the Commonwealth, and that responsibility for supervision of police work should be centered in the Commissioner of Public Safety.

This plan, like the one suggested above, would not disturb the present municipal police forces. Officers of the present departments would be retained with corre-

sponding rank. Recruits in the future could be selected as they are now from the residents of the particular municipalities, with assignment of duty therein. The main objective sought is a centralized supervision of all our Massachusetts police forces.

This opinion is mindful of sentiments formerly prevailing among many of our citizens opposed to statewide police control. It is believed, however, that much of the fear then entertained has been found to be groundless. Moreover, conditions have changed radically in the past few years. The Commonwealth is not large, and it is thickly populated. The facilities of modern transportation have made us all neighbors. Organized crime operates in large areas and in many municipalities. The necessity of co-ordinating police agencies is far greater today than it has ever been before in the history of the Commonwealth.

There is nothing in this suggestion that runs counter to "home rule." The personnel of the force which has to do with local disturbances and the policing of beats would be composed as it is now of the residents of the cities and towns. The suggestion merely involves a central supervision over local chiefs, and the elimination of local political interference which ought to have no place in the functioning of a police force. Crime is not local. The criminal law applies equally in all parts of the Commonwealth, and there should be no discretion in local officers in the matter of administering the law.

The right of municipalities to govern themselves in the sense of electing their own officers and adopting regulations for the conduct of their local affairs does not carry with it a choice whether the laws of the Commonwealth shall be enforced.

The basic vice in the present system lies in the variance which exists in equipment, personnel and training of our numerous police forces, in the varying vigor of their law enforcement, and in the divided responsibility necessarily incident to such a state of affairs.

Submitted with this report is a tentative act to establish

a metropolitan police district which is in accordance with the opinion in the Commission that there should be a consolidation of all police forces in the metropolitan area of Greater Boston into one unit under the control of a commissioner appointed by the Governor. (See Appendix C.)

Public Prosecutors.

The Attorney-General and the District Attorneys are the public prosecutors in Massachusetts. All of them are elected officers, — the District Attorneys in eight districts, and the Attorney General at large by all the voters of the Commonwealth.

Under the original Constitution of the Commonwealth, the Attorney General was not elected by popular vote, but was appointed by the Governor, who was also authorized to appoint a solicitor general. This plan conformed to that which has always prevailed in the Federal government. The Attorney General of the United States is appointed by the President, and a solicitor general is also appointed by him. The Attorney General of the United States exercises direct control and supervision over all criminal business, keeping in close touch with the several District Attorneys throughout the country. He has recently instituted an active campaign against racketeers and kidnappers, and is personally supervising this campaign. The civil business of the government is under the direct control of the solicitor general.

Apparently this was the plan which the framers of the Massachusetts Constitution had in mind, and it is likely that the Federal plan was based on our own Constitution. The original plan was followed down to 1821, when a law was passed providing that the salary of the solicitor general or of the Attorney General should cease when the first of the two individuals then occupying those offices should die or resign, or when his office otherwise became vacant. The solicitor general was the first to die, and thereupon his office became vacant and no solicitor general has been appointed in this Commonwealth since that event occurred.

The provisions of chapter 78 of the Acts of 1821, above referred to, indicate that the legislation was not aimed at a particular office or at an incumbent, but that it was thought that both offices were not necessary, and that one officer alone could exercise control of both criminal and civil business of the Commonwealth. The Attorney General continued to have direct control, and has always had full authority to control criminal prosecutions in any district of the Commonwealth.

An essential incident, and doubtless the purpose of this plan, was that it centered responsibility for the conduct of criminal prosecutions in the name of the Commonwealth in the Governor, just as ultimate responsibility in the Federal system is placed upon the President.

In 1855 the Constitution was amended so as to provide that the Attorney General should be elected by the people rather than appointed by the Governor. From time to time statutes have been passed putting additional burdens on the Attorney General in civil matters,[1] so that the pressure of this business has become so great that the Attorney General has little time, nor has he a sufficient staff of assistants, to give attention to the prosecution or supervision of the very large number of criminal cases begun every year in the various districts of the Commonwealth. There have been times in the past when the Attorney General has exercised this authority, but the occasions have been rare, and in recent years the Attorneys General have left the enforcement of the criminal law to the District Attorneys.

There have been other reasons beside lack of time and of assistants which have contributed to this attitude on the part of the Attorneys General. The District Attorneys as well as the Attorneys General are elected by the people. They are apt to resent any interference with their enforcement of the criminal law within their districts, and to regard such interference as an implied criticism of their performance of duty. Attorneys General and District Attorneys are often potential candidates

[1] See Report of the Attorney General for 1926, pp. 30-35.

for other public offices. Advancement depends upon vote-getting ability. The District Attorneys inevitably have considerable political influence in their respective districts. These circumstances, and others, have presented obstacles to any active control over criminal business by the Attorney General. The result has been that the original plan of a central control with ultimate responsibility in the Governor has been entirely abandoned, supervision has been lost, and responsibility has become decentralized.

It may have been advisable a century ago to combine the duties of enforcing the criminal law and of asserting civil rights of the Commonwealth in one individual. Crime conditions were utterly different then from those which prevail today, and there was no such volume of civil business as has in recent years been put into the office of the Attorney General.

The election of the Attorney General was of much more questionable advisability. The Attorney General is the chief law officer of the Commonwealth, and it is desirable to have him in complete harmony with the Chief Executive. Furthermore, he should be free from the direct political considerations which necessarily act upon an Attorney General who is elected by direct popular vote — who is necessarily a political candidate. Qualified lawyers who are wholly unwilling to enter the political arena ought to be available for such an important office. Finally, ultimate responsibility for enforcing the criminal laws ought to be lodged where it belongs, — in the Chief Magistrate of the Commonwealth.

We therefore recommend that the original provision of the Massachusetts Constitution in this respect be restored, and that hereafter the Attorney General be appointed by the Governor, with the advice and consent of the Executive Council, his term of office to expire with that of the Governor who appoints him.

We also recommend that the office of solicitor general be revived, as is permissible under chapter 2, section 1, Article 9, of the Constitution; and that such legislation

be adopted as may be necessary to place criminal business under the direct control of the Attorney General, and to place civil business under the direct control of the solicitor general.

As an alternative though less desirable plan, we recommend that if the Attorney General is to continue to be elected, the enforcement of the criminal law be entrusted to a prosecutor general to be appointed by the Governor, with the advice and consent of the Executive Council.

This division of the Commonwealth's civil and criminal business would relieve the Attorney General of the pressure of business which admittedly exists today. The prosecutor general would be free from direct political influence. He would make periodical visits to the various districts, advise with the district attorneys, and participate with them in the institution and presentation of criminal proceedings. The supervision of a prosecutor general would not be taken as indicating that any district attorney had become derelict in his duty, as might any activity on the part of an Attorney General in the criminal matters of a particular district at the present time. The prosecutor general's activities would co-ordinate, assist and strengthen the efforts of District Attorneys in the repression of criminal activities. His appointment would obviate practically all of the undesirable features which are today attributed in some quarters to the popular election of District Attorneys. He should be appointed for a term sufficiently long to insure comparative freedom from all influence — we suggest appointment for a term of six years.

If either of the above recommendations is adopted, the Commissioners are agreed that District Attorneys should be elected in the several districts as they are now.

If neither of these recommendations is to be adopted, there is opinion within the Commission that District Attorneys should hereafter be appointed by the Governor, with the approval of the Executive Council, rather than elected by popular vote as they are at present. This opinion is based upon the belief that appointment of Dis-

trict Attorneys would result in an improvement in criminal law enforcement. It is doubtful whether the average citizen today feels that he is sufficiently informed to pass upon the qualifications of candidates who present themselves for election to the office of District Attorney. Moreover, many attorneys who would make excellent District Attorneys are unwilling to enter into a political contest for election to that office. The appointing power would probably feel a keen responsibility in making appointments of District Attorneys; the manner in which our Governors have acted in appointing judges has always been a matter of primary interest to our citizens, and interest of the same sort might be expected in the appointment of District Attorneys. The right of the people to choose their Governor would constitute an ample protection against any possible abuse of the power of appointment.

There is also an opinion within the Commission that District Attorneys should continue to be elected by the people in any event. This opinion would be the more confident if the Attorney General were appointed, or if, in the alternative, a prosecutor general were appointed, as we have suggested. The District Attorneys are practically the only officers engaged in the direct enforcement of the criminal law who are now elected by the people, and it is felt that the people should continue to have some direct voice in the choosing of those who are to administer the criminal law. The Commission is unanimous in its opinion that the appointment of judges in Massachusetts has worked well. The opinion within the Commission favoring the continuance of popular election of District Attorneys rests in part upon the belief that to take the right to elect district attorneys from the people, leaving them without any direct voice in the enforcement of the criminal law, might result in an increased support for the present minority view that our judges should be elected rather than appointed.

Many of the conditions which now hamper District Attorneys in the performance of their duties would be

corrected if the recommendations made in other parts of our report are accepted. The reorganization of the District Courts and the elimination of double trials should do much to relieve the congestion which at present exists in District Attorneys' offices. Limitation of the use of the grand jury to cases to which it is suited would remove an unnecessary and burdensome bit of machinery from the prosecution of ordinary criminal cases.

The Commission's unanimous recommendation in the matter of public prosecutors is (1) that the Attorney General be hereafter appointed by the Governor instead of elected by popular vote as at present, his term of office to expire with that of the Governor who appoints him; and that the office of solicitor general be re-established; or (2) that the office of prosecutor general be created, said office to be filled by appointment by the Governor, the prosecutor general to serve for a term of six years, and to have the duty of supervising criminal law enforcement throughout the Commonwealth. The advice and consent of the Executive Council should be required in the making of any appointment if either of these recommendations is adopted.

District Courts.

A reorganization of the District Courts is imperatively demanded, and recommendations to that end are hereinafter made. In formulating these recommendations we have considered the matter from the standpoint of the justices and associate justices of the District Courts as well as from that of the general public, and have endeavored to adjust our recommendations so far as possible to the situation in which such judges find themselves. It is necessary, however, that wherever there is an irreconcilable conflict between the interest of the general public and that of the judges, the public interest must always be regarded as paramount and must prevail.

If such reorganization is made, changes in procedure may be affected which will not only make the adminis-

tration of the criminal law more expeditious, but will result in a saving in the expense of such administration. These changes would make the functioning of the inferior courts more efficient, thereby procuring for them the entire confidence of the Bar and of the public, which would go far to strengthen law enforcement in combating organized crime.

For example, it has been suggested that the grand jury ought to be eliminated as a part of the ordinary administering of the criminal law. An essential feature of the plan involved in that desirable reform is that a holding on the question of probable cause by a judge of the District Court in the ordinary felony case should operate as an information so as to put the accused to his trial in the Superior Court.

Elimination of the many appeals from the District Courts to the Superior Courts would be a long step forward, diminishing as it would the congestion of cases in the District Attorneys' offices and in the Superior Court, and working a large saving both of time and money. In this connection suggestion has sometimes been made that juries be summoned in the District Courts. Whatever would be the advantages of such a system, it would certainly have disadvantages. This Commission does not favor such a change, and even if it did, the cost of such a system would be prohibitive. It seems to us that it would be much better to abolish double trials altogether by requiring that defendants prosecuted before the District Courts elect at the time of their plea either to stand trial in the District Court, or to remove the case to the Superior Court for jury trial. If election of a District Court trial were made, the election should constitute a waiver of the defendant's right to a jury trial. Any question of law arising in a District Court criminal trial might then be brought to the Appellate Division and thence to the Supreme Judicial Court, just as are questions of law in civil cases today. This system is now in use in civil cases and it has worked well.

The Appellate Divisions would not only hear appeals

on questions of law, but would also on request review any sentence which might be imposed by a District Court, thereby assuring a desirable equality of penalties for similar offences.

There should be removed from the criminal courts altogether some of the minor automobile offences which have no direct relation to the happening of accidents and which now constitute a considerable portion of the criminal cases in the District and Superior Courts.

The success of the system proposed for criminal cases would depend, to a large extent, upon the confidence which was felt in the District Courts, for if cases were generally removed to the Superior Court, the congestion there would be increased rather than diminished. If the present defects in the District Court system can be eliminated, and, as far as possible, full-time and adequately compensated judges can be assigned for duty there, it is believed that it will be safe to adopt in the criminal practice the system now employed in civil cases, — that when a jury trial is desired it must be claimed at the outset of the proceedings, thus avoiding the waste of time and money, and eliminating other disadvantages, incident to the present system of double trials.

Circuit Court. — There has been considerable public discussion of the creation of a circuit court in place of our present District Courts. Suggestion has been made that the District Courts be abolished and that a circuit court be substituted in place thereof. There are serious practical difficulties standing in the way of such a plan. We think the administration of the criminal law and respect for law and the courts would be strengthened if the District Courts were organized on a circuit basis with the judges serving full time as do the judges of the Superior Court now; and we believe that this result may be accomplished by a gradual reorganization of the existing courts, and without violent change.

Under existing laws there are three Appellate Divisions of the District Courts of the Commonwealth, exclusive of the Appellate Division of the Municipal Court of the City

of Boston. These Appellate Divisions should be created into judicial circuits, with assignment of the several judges within each circuit to service in the several courts therein as hereinafter suggested.

Of the District Courts of Suffolk County, the West Roxbury Court is included in the Southern Appellate Division; the remaining courts in Suffolk County, except the Boston Municipal Court, are included in the Northern Appellate Division. These Suffolk County District Courts should be withdrawn from the Northern and Southern Divisions, and, together with the Boston Municipal Court, should be established as the First Judicial Circuit.

In earlier days, when the Boston Municipal Court had a larger jurisdiction than the other District Courts, there was justification for dealing with it on an exceptional basis, but we see no valid reason for treating it today on a basis different from that of other District Courts. It has today the same sort of jurisdiction as the District Courts, and is in fact a District Court in the city of Boston. It seems to us to be preferable as a first step to leave all of the District Courts in Suffolk County as they are now constituted, combining them only to the extent of putting them into one Appellate Division with authority in some body to assign cases and judges in all of them as convenience may dictate.

The Northern, Southern and Western Appellate Divisions, thus modified, should be established as the Second, Third and Fourth Circuits. The present Appellate Divisions should be formed as they are now under existing law, by appointment of judge and presiding judges by the Chief Justice of the Supreme Judicial Court, who should be authorized to appoint the judges of the Appellate Division for the First Circuit.

Judges, and special justices if necessary, should be assignable to any District Court within the Appellate Division to which their courts belong, preference being given to the presiding judges so far as possible, with a view to engaging their full-time services.

Several suggestions have been made as to the method to be employed in assigning the judges for service in the several courts within each circuit.

The Special Commission on Public Expenditures recommends that the assignments be made by the Chief Justice of the Superior Court. We think there are several objections to this suggestion. It throws another heavy load upon an office already heavily burdened. There may be serious legal questions whether the Chief Justice of the Superior Court (a statutory court) could be given judicial functions to be performed in the District Courts. Whether or not such authority could be given, it does not seem to us to be advisable or necessary to do so.

It has also been suggested that assignment be made by the presiding judges of the Appellate Divisions of the several circuits. This does not seem to us to be advisable at the present time. The judges of the several District Courts today stand upon an equality of judicial position, one toward another. We do not believe that it would work well in the initial stages of this development to put so important and delicate a matter into the hands of one of the present judges. The salaries of the judges are not established upon a uniform basis, but upon the basis of population within their respective jurisdictions. There are differences in the relative importance of the courts and in the volume of judicial business done in them.

Doubtless the matter of assignment of the judges would present difficult and somewhat complicated problems. It would probably be thought advisable to hold sessions for criminal business, for juvenile business, for the handling of domestic relations controversies, and for the adjustment of small claims locally at the situs of the present courts. There seems to be no necessity, however, that civil cases be tried in all of the District Courts. The jurisdiction of the District Courts in civil controversies arising out of breaches of contract and the commission of torts is co-extensive with that of the

Superior Court, the sessions of which are held at county seats. There seems to be no valid reason why civil lists in the several circuits could not in many localities be made up in the courts at the county seats or at others conveniently situated.

We believe that the nature of the problems that would naturally arise in the assignment of judges to the several courts are such that it would be better that those assignments should be made at the outset by the authority of the judges of the Appellate Divisions within the respective circuits. This arrangement would place the authoritative control of the handling of judicial business within a circuit in a bench of judges of equal standing, the membership in which would vary from time to time so that it might be expected that all of the judges in the circuit would at some time hold place on that bench. The Appellate Court should also be authorized to adopt rules governing practice and procedure in the several courts in the circuit, and to exercise general supervisory powers over such courts.

Special Justices. — We feel that much of the criticism that has existed touching the District Courts has been due to the system of appointing special justices who sit from time to time as they may be called upon to do so, and at a per diem fee which varies in different courts of the Commonwealth and is payable if the special justice sits during any portion of the day. There is criticism, also, that certain special justices have tried cases in the courts to which they are attached, and that this practice has contributed to disrespect for the courts.

We do not feel that criticism should be levelled solely at the justices themselves. The system itself is essentially wrong.

As Daniel Webster said over a century ago in a speech in the Federal House of Representatives, on "The Judiciary:"

> In regard to the judicial office, constancy of employment is of itself, in my judgment, a good, and a great good. I appeal to the conviction of the whole profession, if, as a general rule, they do not find that those

judges who decide most causes decide them best. Exercise strengthens and sharpens the faculties in this more than in almost any other employment. I would have the judicial office filled by him who is wholly a judge, always a judge, and nothing but a judge. With proper seasons, of course, for recreation and repose, his serious thoughts should all be turned to his official duties; he should be *omnis in hoc*. I think, Sir, there is hardly a greater mistake than has prevailed occasionally in some of the States, of creating many judges, assigning them duties which occupy but a small part of their time, and then making this the ground for allowing them a small compensation.

It was probably too much to expect that special justices in country localities would refrain from practicing on the civil side of the District Courts when they were not prohibited from such practice, though doubtless it would have been better if the few who have practiced in their own courts had refrained from doing so. The entire amount paid to the one hundred and fifty-eight special justices in the Commonwealth in 1932 was only $131,390, or an average of approximately $830 to each. The largest amount paid to the special justices in any court was $10,857, divided among three special justices, an average of $3,616 each. In many of the smaller communities in the Commonwealth it might be a distinct hardship and probably a public inconvenience if special justices were prohibited from practicing in the civil as well as in the criminal courts in their Appellate Division.

This Commission, however, is charged only with the duty of submitting recommendations as to practice and procedure in criminal matters. We believe that it is distinctly harmful to have special justices trying cases for those accused of crime, either in their own courts or in any of the District Courts. It is such practice by some of the special justices which has caused justifiable criticism; we feel that it ought to be prohibited for the sake of respect for the law and for the courts.

The case of the presiding judge should stand on a different footing from that of the special justice. It does so today under the existing statutes. Presiding judges of District Courts, we feel, ought not to be engaged in the

trial of cases in any District Court. If their services were engaged on a full-time basis with adequate compensation, there would be no hardship in prohibiting them from trying cases in any of the District Courts; and we concur in the recommendation of the Special Commission on Expenditures that the statute be amended so as to prohibit them from practicing in civil or criminal cases in any of the District Courts of the Commonwealth.

If the recommendations herein contained are adopted, there should be no further abuse arising out of the trial of cases by the special justices. It is highly probable that special justices who are engaged in the trial even of civil causes in District Courts would not be called to sit in those courts.

If the District Courts are established in circuit as herein suggested, there might be little occasion to employ the services of the special justices. The present judges could be assigned for substantially full-time duty. The inequalities of salary that now exist might be taken care of on an hourly basis so as to equalize compensation. If, for example, $6,000 per annum, the largest salary now paid to a District Court judge, except in the Municipal Court of the City of Boston, were taken as the basis for full-time service, the services of judges who receive less than that could be availed of until their fixed salaries were exhausted, with compensation for overtime service. In a relatively short time an experience will have been had sufficient to enable the Legislature to determine the number of full-time judges necessary to handle the business of the District Courts and the proper amount of compensation that should be paid for their services.

There would probably be little need to engage the services of special justices; they may be retained upon call, constituting a reservoir of justices to handle the judicial business, until we have had sufficient experience to determine the number of full-time judges required. We believe that no special justices should be appointed in the future as the offices of those we now have become vacant.

We therefore recommend:

1. That the District Courts of the Commonwealth be organized into four circuits, as follows: The First Circuit, to be composed of the District Courts of Suffolk County, including the Boston Municipal Court; the Second Circuit, to be composed of the District Courts of the present Northern Appellate Division, excluding District Courts in Suffolk County now included in that division; the Third Circuit, to be composed of the District Courts of the Southern Division, excepting the West Roxbury Municipal Court; and the Fourth Circuit, to be composed of the District Courts of the Western Division.

2. That assignment of judges within the respective circuits be made by the judges of the Appellate Divisions thereof, such Appellate Divisions to be composed as they are now.

3. That no special justices be appointed to the District Courts in the future.

4. That legislation be adopted requiring defendants prosecuted in the District Courts to elect at the outset of the prosecution whether to stand trial in the District Court without right of appeal, or to remove the case forthwith to the Superior Court upon claim of a jury trial.

5. That a right of appeal be given to defendants who stand trial in the District Courts to the Appellate Division thereof on the question of sentence alone, the Appellate Division to act in this respect as a board of review of sentence.

We submit herewith drafts of legislation deemed necessary to accomplish the results herein recommended. (See Appendices D and E.)

PART IV.

RECOMMENDATIONS RELATING TO THE JURY AND BAIL SYSTEMS, WARRANTS AND PETTY OFFENCES.

We submit herein recommendations for the improvement of the jury and bail systems and for the amendment of the laws relating to the execution of warrants and to petty automobile offences.

The Grand Jury.

The value of the grand jury as a cog in the machinery of criminal justice has been the subject of much discussion in recent months. In such discussions various assertions have been made relative to our grand jury system, usually culminating in a statement either that the grand jury should now be abolished entirely, or that no change whatever should be made in our present uses of it. The Commission cannot adopt either of these views. We are of the opinion that an established institution such as the grand jury should not be abolished while it continues to serve any useful purpose, but that instead its use for those purposes for which it has become unfitted should be discontinued. A very brief review of the history of the grand jury and a frank and detailed examination of its present-day workings in Massachusetts will disclose the uses for which it is suitable under modern conditions and those for which it is not.

The grand jury originated centuries ago in England. It was created as a protection against the rigors of the private prosecutions which were then customary, and against the criminal prosecutions which were then used to punish any opposition to the crown. The grand jury was a bulwark between the power of the crown and the liberties of the people, and the English colonists naturally brought it with them to America as a protection of their

political liberty. When the freedom of the colonies was established, the requirement of a grand jury indictment as a step in the prosecution of all "capital and otherwise infamous crimes" was embodied in the Bill of Rights (first ten amendments to the Constitution of the United States), and similar provisions were inserted in the constitutions of most of the newly formed States. This widespread requirement of grand jury indictments for all serious crimes by the new American States was somewhat of an incongruity, for immediately after the American Revolution French ideas were popular in this country, and as a result the English system of private prosecutions in criminal cases was everywhere supplanted by the French system of entrusting the conduct of all criminal cases to a public prosecutor. The system adopted by most of the newly formed States and by the Federal government for their criminal prosecutions was in effect a combination of French and English ideas.

The Constitution of Massachusetts has never had an express provision for indictment by a grand jury in criminal cases. It contains, however, the following provisions (Constitution of the Commonwealth, Part the First, Article XII):

> No subject shall be held to answer for any crimes or offence, until the same is fully and plainly, substantially and formally, described to him; . . . And no subject shall be arrested, imprisoned, despoiled, or deprived of his property, immunities, or privileges, put out of the protection of the law, exiled, or deprived of his life, liberty, or estate, but by the judgment of his peers, or the law of the land.
>
> And the legislature shall not make any law that shall subject any person to a capital or infamous punishment, excepting for the government of the army and navy, without trial by jury.

In the case of Jones *v.* Robbins, 8 Gray, 329 (1857), it was held that the above provisions made indictment by a grand jury necessary whenever the offence charged against a defendant was punishable by death or by imprisonment in the State Prison. It was not a unanimous decision. The public policy argued in support of the

majority opinions was the desirability of protecting the individual citizen from the power of the government and the passions of the prosecutor. There was a well-reasoned dissenting opinion based upon the proposition that the majority of the court were wrong in their construction of the constitutional provisions upon which they rested their opinions. The prevailing opinion in Jones *v.* Robbins resulted in the division of criminal cases which we have today. Cases in which punishment for the offence charged must be death or imprisonment in the State Prison require indictment by a grand jury, while cases which can be disposed of by a lesser sentence can be tried on complaint.

The machinery for the assembling and organization of a grand jury is contained in General Laws (Ter. Ed.), chapter 277, sections 1–14. Provision is there made for the summoning by the clerk of court of twenty-three men to serve as grand jurors. The grand jurors elect their own foreman and clerk. In Suffolk County a grand jury serves for six months, and in the other counties for about one year. It is to this body that the prosecuting attorney presents the criminal cases which require grand jury action to bring a defendant to trial. Each grand juror is paid $5 a day, and is allowed five cents a mile for travel for each day of his attendance.

In order to evaluate the grand jury properly, we shall proceed to a consideration of the frequency of its use and the manner of its actual working in the ordinary criminal case. The great power of publicity almost automatically takes care of the unusual cases. What happens in that great majority of cases which the spotlight of publicity never touches is our principal concern.

All criminal cases in this Commonwealth are now begun either by a complaint to a district or municipal court requesting that a summons or warrant issue, or by the presentation of evidence to a grand jury as the basis for an indictment. The majority of our criminal cases are

not at present commenced by indictment; by far the greater number of such cases are commenced by summons or complaint. Indeed, it is the avowed policy of the present district attorney of Suffolk County, where substantially half of the criminal business of the Superior Court is handled, to refer all ordinary matters presented to him to the lower courts, even though the offence charged is a felony, for preliminary hearing on the question whether or not there is probable cause for criminal action. This is a natural and proper reaction of a busy prosecutor to pressure of business, and is an attempt to relieve such pressure by utilizing available judicial agencies which are better equipped to handle the question of probable cause fairly. Certain exceptional cases are today usually commenced by grand jury indictment, such as cases involving injury to large numbers of the public (bank failures, misconduct on the part of public officials, stock swindling schemes, etc.), and cases in which the defendant is absent from the Commonwealth and his extradition is required.

If a criminal case is to be started by an application to a District or Municipal Court for a warrant or summons, the person accused may file a request with the District or Municipal Court for an opportunity to be heard on this application, and it is the usual practice to accord him such a hearing. The extent of the hearing is a matter in the discretion of the judge or clerk of court who receives the evidence, and the practice varies widely. Sometimes the judicial officer conducting the hearing is content with the testimony of one witness for the prosecution. At other times the hearing on application for process is conducted like a trial, with an array of lawyers, witnesses and stenographers on both sides.

If criminal process is issued, the defendant is brought before the District or Municipal Court for arraignment (General Laws, chapter 218, section 26). If the charge is of a simple misdemeanor, the defendant's trial then takes place. We shall consider the trials of these misdemeanors and of the appeals therefrom in another por-

tion of our report. But if the charge is of an offence punishable by a State Prison sentence only, the court has no jurisdiction to try the case. If the offence charged is punishable either by imprisonment in State Prison for not more than five years or by imprisonment in some other institution, or fine, the court may accept or decline jurisdiction. We shall now consider the method of dealing with those cases in which the District or Municipal Court is without jurisdiction or has declined jurisdiction; these cases are termed felony cases, and are the cases in which indictment by a grand jury is today invariably required.

Even though the District or Municipal Court has no jurisdiction or has declined jurisdiction, it must nevertheless proceed to examine the witnesses for the prosecution in the presence of the defendant. This examination is the right of the prisoner, and it must be held unless he waives it. Such examinations vary in extent in the different courts, but, on the whole, they greatly exceed in thoroughness the precomplaint hearings. By statute the defendant has a right to be represented by counsel and to cross-examine the witnesses for the prosecution. He may also produce witnesses in his own behalf and testify himself if he so desires. Again, we have the array of lawyers, witnesses and stenographers.

If the District or Municipal Court decides after such hearing that the evidence has disclosed that there is probable cause to believe that a felony has been committed by the defendant, the court orders that the defendant be held for the grand jury, and the clerk transmits the papers in the case to the Superior Court. The case is then ready for the grand jury. However, the grand jury is not always in session. In Suffolk County the grand jury convenes on the first Monday of every month, and usually its sitting is completed in four or five days. In Middlesex County the grand jury convenes ten times a year; in Worcester County four times; and in all the other counties three times a year or less. The result is that a defendant who is held for the grand

jury must usually wait for his trial either in jail or out on bail a period of anywhere from one to four weeks in Suffolk County, and from a week to six months in the other counties.

In order to present the matter properly to the grand jury, the prosecuting officer must prepare the case by interviewing the witnesses. If in his opinion further evidence is necessary in order to establish probable cause, it is his duty to withhold the case from the grand jury until such further evidence can be obtained, sometimes causing the case to go over to the next sitting of the grand jury. As a practical matter, therefore, the prosecuting officer must always pass on the question of probable cause in his own mind.

The hearing before the grand jury again requires the presence of the witnesses for the prosecution. Neither the defendant nor his counsel can appear in the grand jury room. Only the government's side of the case is heard. The question of probable cause is again considered, although it has been considered at least once and perhaps three times before. When an indictment by the grand jury has been returned, the case as a legal controversy between the Commonwealth and the defendant has just begun.

Many requirements surround the conduct of grand jury investigations, which must be strictly observed, and if these requirements are disregarded, the indictment will be dismissed. Among these requirements is the requirement that the grand jury proceedings must be entirely secret. No one can be present in the grand jury room but the jurors, the prosecutor, the witness who is testifying, and a stenographer or an interpreter when their services are required. Only the prosecutor can be present while the grand jurors are deliberating. It is the duty of the prosecutor to instruct the jurors as to the law, and to assist them in examining the witnesses.

If the grand jury returns an indictment, it must be carefully drawn. In spite of liberalizing statutes providing that indictments shall not be held void because

of informalities in spelling, punctuation or description, and the statute which permits the District Attorney to amend an indictment in non-essential parts, the drafting of indictments is still a highly technical matter, and the proof offered must strictly follow the indictment. Amendment by the District Attorney in essential allegations cannot be permitted because of the constitutonal requirement of indictment by a grand jury. When the proof fails to conform to the indictment, even though it discloses that a crime was committed by the defendant, the case is ended by a directed verdict.

It is clear from the foregoing consideration that the grand jury is an unwieldy and expensive piece of legal machinery for the handling of each and every one of the great number of felony cases which pass through our courts today. The cost of grand jury sessions in jurors' fees alone for the year ending June, 1933, according to the figures furnished the Commission, was $57,890.97. This does not include the large amounts spent for witness fees, upkeep of grand jury rooms, meals, stenographic services, and the other expenses incidental to the proper functioning of grand juries. However, the matter of expense is not paramount. There are other more fundamental and serious objections to any excessive use of the grand jury.

First, there are the inevitable delays which result. It is an accepted axiom of the administration of the criminal law that the shorter the time that elapses between the commission of a crime and the trial, the better is the chance that the guilty person will be convicted. The victim of the crime is aroused, the recollection of witnesses is fresh, and the guilty defendant has less time in which to use influence, bribery or intimidation to bring about a change in testimony or the disappearance of a vital witness. If a long time elapses between the commission of a crime and the trial, the complainant and witnesses for the prosecution may be approached by the defendant or those acting for him, and, even if this is not done, the memories of all concerned become clouded by

lapse of time, or the witnesses may die or move away, so that the guilty defendant has a greater opportunity to escape the punishment due him.

Next, there is the great waste of effort which is necessarily incident to our present-day excessive use of the grand jury. In conducting any administrative system, whether it be in a public or private enterprise, duplication of effort is a defect which should be constantly watched for and guarded against. There is no more glaring example of this defect in any administrative system, public or private, than in the establishment of probable cause in the usual felony case today. We have in series:

1. A police investigation.
2. A pre-process hearing.
3. An examination by a District or Municipal Court judge.
4. An examination by the District Attorney.
5. A hearing before the grand jury.

Not only is the time of the various officials involved needlessly wasted, but the witnesses for the prosecution are compelled to give up an unconscionable amount of their time to see that justice is done. They must often spend hours being interviewed by the police, and then appear in court and wait around for pre-warrant hearings, examinations and grand jury hearings, usually each on a separate day and sometimes for more than one day at a time. This attendance is, of course, only preliminary to attendance at the actual trial of the case, often preceded by attendance in court on prior days when postponements are ordered. A person who has once been through this series of hearings, or who has heard about it, is reluctant to admit that he was a witness of a crime, and criminals often escape unpunished in consequence.

Probably the most serious objection to the grand jury as a present-day requirement in all felony cases is the avoidance of responsibility in criminal law enforcement which it makes possible. The District or Municipal Court judge who knows that a case is to go to a District Attorney with the power to nol pros, and to a grand jury with the power to "no bill," is naturally tempted to mini-

mize the necessity of a serious consideration of the evidence by him. His natural tendency is to hold for the grand jury on slight evidence. If this happens, there is a consequent hardship on the innocent defendant who receives the unfavorable publicity of being held for the grand jury, and who must stay in jail or provide bail pending the grand jury's action. When the case comes to the Superior Court, there is again a resultant avoidance of responsibility. The District Attorney who does not wish to prosecute a particular case can evade the responsibility of a refusal to prosecute, or of a nol pros, by presenting the case to the grand jury in the hope of a return of "no bill." The "buck passing" which started in the District or Municipal Court then ends in the grand jury room, with an accumulation of expense to taxpayers, of hardship to the innocent, and of aid to the guilty.

Finally, every one familiar with the actual workings of our criminal law knows that the grand jury is today simply a rubber stamp for the opinion of the District Attorney in the great majority of cases. Even those entirely unacquainted with judicial machinery will recognize that a group of laymen untrained in the law, in strange surroundings, facing utterly new problems, are bound to be influenced by that one in their midst who is by training and experience familiar with the business at hand, and whose duty it is to guide them in their deliberations. In addition to these psychological advantages, the District Attorney has the practical control over the cases which will be presented, and of the witnesses who will be called and the conduct of their examination. The cases can be presented in any light which he sees fit to cast upon them. While the grand jury's power exists independently of the District Attorney, it has no facilities for investigation and usually no knowledge of methods. Despite these facts, the responsibility for the commencement of every felony case today rests in theory solely upon the grand jury, a constantly changing body which is immune from correction by public opinion or political action, and which almost always acts as the prosecutor desires it to act.

This situation disposes of the argument most often advanced against any abridgement in our use of the grand jury, namely, that the grand jury furnishes a protection against arbitrary, corrupt and vindictive actions by public prosecutors. In the light of the actual facts, and having in mind the great number of criminal cases which must be disposed of today, the grand jury appears to be a shield in the ordinary and unpublicized felony case to the very rare prosecuting officer who would be capable of such acts, rather than a bulwark between him and the individual citizen. The conflict between fact and theory favors the prosecutor rather than the individual defendant. Without the grand jury, an arbitrary, corrupt or vindictive prosecutor would have to accept the full responsibility for his actions or his failures to act in ordinary felony cases. Under the present system he can hide behind the action of the grand jury.

In view of the foregoing considerations, it would seem that the theoretical value of the grand jury as a required step in the prosecution of the ordinary felony case is greatly outweighed by its very real disadvantages. The conditions which made it desirable in England centuries ago do not exist today. Twenty-four States of the Union have, therefore, done away with the requirement of a grand jury indictment as a necessary step in the prosecution of routine offences. The requirement of a grand jury indictment was this year abolished in England itself for all but the exceptional cases to which it is adapted.

If the constitutional requirement of a grand jury indictment for all felony cases in Massachusetts were done away with, ordinary felony cases might then be commenced by information filed and sworn to by the District Attorney. Since it would be a physical impossibility, as well as undesirable from the standpoint of organization, for the District Attorney to pass upon the question of probable cause as an original matter in all cases arising in his district, the present system of original issuance of process from the District and Municipal Courts on usual felony cases should be retained. A finding of probable

cause by such a court should place the defendant upon his trial in the Superior Court. The excessive duplication of effort and the long delays with their consequent evils would thereby be obviated. The unnecessary expenses of the grand jury would be eliminated. Some division of responsibility between the District or Municipal Court judge and the District Attorney would still exist, but with each bound to accept the responsibility for his own acts or failure to act, and with both unable to deflect their responsibilities into the secrecy of a grand jury room.

We therefore recommend that the requirement of a grand jury indictment for every felony case be done away with. We recommend also, however, that the grand jury be not abolished. It should be retained for use in those classes of cases in which it has real value. It is conceivable that in any of the counties of the Commonwealth a political machine might become so strongly intrenched that the District Attorney could defy better informed public opinion with impunity. Or it might become necessary to inquire into the conduct of public officers, even of the prosecuting officer himself. In such situations, and in many other situations, a grand jury is admirably fitted to conduct the required investigation. So that it may be immediately available for any such service, we recommend that the power be given to any Superior Court judge to call a grand jury into session at any time.

If we are hereafter to use the grand jury only for those purposes to which it is today adapted, a constitutional amendment will be necessary. We recommend, therefore, that the following constitutional amendment be adopted:

> The legislature may provide for holding persons to answer for any criminal offence without the necessity of presentment by a grand jury.

This amendment will make it possible for the Legislature to enact the statutes required to carry our recom-

mendations into effect, or to adopt such other measures relative to the use of the grand jury as the Legislature may deem desirable. As a basis for such legislation, we recommend the Model Code of Criminal Procedure, drafted by the American Law Institute, with such changes as may be necessary to conform its provisions to our Massachusetts practice.

The Jury.

The jury has been the great common law agency for the settlement of disputed questions of fact in criminal cases. The foundation-thought on which the jury was erected is that it is better to have questions of fact decided by a representative group of laymen, none of whom are a part of the regular machinery for the enforcement of justice, rather than by a professional fact-finder. The determination of the facts in any particular criminal case involves many conflicting considerations, and such determination should be approached with as much freedom from preconceived ideas as is humanly possible. Unlike questions of law, which are always decided by our judges, the determination of questions of fact in criminal cases usually involves no long period of training, but rather the application of the rules of common sense, with which one becomes familiar in the ordinary walks of life, to the conflicting testimony of witnesses of varying types.

The value of the jury in criminal trials has been tested by the experience of centuries. It will be found on careful analysis that most of the criticisms directed at the jury as an instrument in the enforcement of our criminal law are really directed at its abuses rather than at the institution itself. For example, there has been criticism that jury trials have been demanded when there was really no disputed fact to be tried. There has also been criticism of the method of selection of juries. Finally, there has been the fact that some individual jurors have yielded to corrupt influences.

In another section of our report we have considered the widespread practice of claiming a jury trial where

there is no real desire for such a trial, but rather a desire for delay and for a less severe penalty for an admitted offence, and we have made suggestions to assist in stopping this practice. The extent of this abuse is made clear by the fact that out of 9,681 cases which were brought by appeal in the year 1932 from our District and Municipal Courts to our Superior Court, 5,245 cases (well over one-half the entire number) were disposed of in the Superior Court upon a plea of guilty; in other words, more than one-half of our criminal defendants "had their fingers crossed" when they said they wanted a jury trial. Further evidences of this abuse of the right to trial by jury will be found in the annexed tables taken from the report of the Department of Corrections for the year 1932, which show the number of indictments and appeals disposed of by actual trial in the Superior Court in that year as compared with those disposed of on plea of guilty.

Leaving any further consideration of unwarranted claims of jury trial, we shall proceed to consider how jurors are at present selected in Massachusetts. Prospective jurymen are selected from those persons qualified to vote for representatives to the General Court who are between the age of twenty-five and seventy years, certain classes of citizens being exempted from service. Most of the exemptions are justifiable. It does not seem to us, however, that there is any reason under present-day conditions for exempting members of the volunteer militia from jury duty. These men are good types of citizens, and the occasions when they are called upon for militia service are so infrequent that their membership in the militia would seldom conflict with their service as jurors. We recommend, therefore, that the exemption of members of the volunteer militia from jury service be abolished.

From the names of the above-described voters there is prepared in each city and town a list of such inhabitants as are "of good moral character, of sound judgment, and free from all legal exceptions . . . qualified to serve as

jurors." If these qualifications are insisted upon we should have excellent jurors. We recommend, therefore, that no further qualification be added to the present requirements for jury service. As for the property qualification so often suggested, we cannot see that the possession of $250 adds anything to a man's potential worth for jury service. If a man is a mature citizen, of good moral character, of sound judgment, and free from all legal exceptions, he is satisfactory jury material.

The method of determining whether prospective jurors possess these qualifications is, however, of supreme importance. At the present time this determination is made by the Board of Election Commissioners in cities having such boards, by the Board of Registrars of Voters in other cities, and by the Board of Selectmen in towns. These Boards must determine, either from the personal knowledge of one of their members, or from the personal appearance of the prospective juror and his examination under oath, whether each prospective juror possesses the requisite qualifications.

In small communities where jury lists are made up from the personal knowledge of members of the selecting board, the selection of prospective jurors is not difficult. In large communities, however, the selection presents serious problems. We may take the practice in Boston as an example of the method of selection in a large Massachusetts community.

In Boston from 11,000 to 12,000 citizens are annually examined for jury duty. The Board of Election Commissioners selects a certain number of voters from each ward, the number being determined in proportion to the ward's population. Cards containing the names and addresses of the voters so selected are turned over to the police with instructions to ascertain and note thereon the following information: name, occupation, name of employer, place of business, physical disabilities, if any, criminal record, if any, and an estimate of the prospective juror's general reputation as to character, judgment and fitness for jury service. When these cards are returned by the police, the

Board of Election Commissioners first eliminates those who are clearly unfit for jury duty. The names on the remaining cards are then cleared through the Board of Probation, to determine whether the prospective juror has a criminal record.

The Board of Election Commissioners then issues summonses to all prospective jurors who remain after these preliminary clearances. When a prospective juror responds to this summons, he answers under oath a questionnaire which supplies the following information: father's name, mother's name, wife's maiden name, residence at the time of the last annual census and at the time of the appearance before the Board, birthplace, citizenship, qualification, name of employer, place of business, physical fitness for jury duty, and record of arrests, if any. After the questionnaire has been answered, the prospective juror undergoes a brief oral examination by one of the Election Commissioners as to his fitness for jury duty. Some of those examined are excused by the Board because of professional or business engagements. The final list of prospective jurors is then prepared by the Board, and the names on this list are placed on individual ballots. The ballots are placed in a ballot box, and all jurors required by the courts are drawn from this ballot box by the Mayor, City Clerk and City Council.

The principal objection to this selective process is its political character. The work which a juror has to perform is clearly not political but judicial. The selection of jurors should, therefore, be under the supervision of the judiciary, and we recommend that it be placed there forthwith. A jury commissioner or commissioners should be appointed in each county by the Chief Justice of the Superior Court or by a justice of that court designated by said Chief Justice, with such clerical and other assistance as may be necessary, and all lists of prospective jurors should hereafter be prepared by such jury commissioners. Each jury commissioner should be appointed for a term of five years, should be removable at any time at the pleasure of the appointing power, and should be furnished with an

office in the courthouse in the principal shire town of his county. There should be made available to the jury commissioners, if they desire to avail themselves of it, the police assistance which is now given to the Boards to which the task of selection is entrusted today. Final acceptance of all jurors certified to a court for service should rest, as it does today, with the court which requires their services.

Jurors required by the courts, selected in the way we have described, are directed to report to the courthouse in which they are to serve. If there is more than one jury session in the courthouse, the present practice is to assign a given number of jurors to each session. In Boston there are usually about eleven jury sessions, five of which are criminal sessions. Twenty-five to thirty jurors are today assigned to each session, and the names, addresses and occupations of the jurors for each session are printed separately. When a jury of twelve of these men retires to deliberate on a case, the jury to try the succeeding case is impanelled from the thirteen to eighteen men who remain. In every criminal case the government and each defendant has two peremptory challenges; in unusual cases they have a larger number. It is apparent that a defendant who is sent in to a criminal jury session for trial, seeing twelve of the available jurors sitting on another case and knowing that the twelve jurors for his case will be picked from the thirteen to eighteen men remaining, knows in advance almost to a certainty who will sit as jurors in the trial of the criminal offence with which he is charged. His peremptory challenges can eliminate any slight uncertainty that may remain.

The present system of assigning jurors for service in particular sessions simplifies the problem of the juror who desires to be bribed and of the individual who desires to bribe him; and there can be no longer any doubt that there are men who have such desires and who are ready to translate them into action. Furthermore, the advance publication of jury lists for each particular session makes it possible for interested parties with large financial resources to look up every juror in advance, and to ascer-

tain in advance each juror's record and prejudices; this gives such a party an unfair advantage over others equally interested but not so well situated financially. Finally, the assignment of jurors to particular panels is unnecessarily expensive.

We recommend, therefore, that the present system of assigning jurors to particular sessions in a single courthouse be discontinued, and that all jurors summoned for jury service in a given courthouse be assembled for service in a central jury room. Each such central jury room should have two or more jury boxes. When a jury is required for a particular session, it should be drawn in the central jury room from the names of all jurors who have been certified and accepted for service. A list of all jurors, with such information as is given concerning them under the present practice, should be posted in the central jury room, and no other lists of jurors should be printed. All impanelling should be by drawing of names from the entire list of jurors, under the direction of a court clerk, and in the presence of the defendant, the prosecuting attorney, and the attorney for the defendant. After twelve jurors have been impanelled, the clerk in charge should, at the request of either party, put to them such questions as to interest in the controversy, and the like, as are now put by the judge. Any men found to be disqualified should be excused, and others selected in their places. The prosecutor and the defendant might then exercise the peremptory challenges to which they are entitled, if they chose to do so, and any vacancies resulting from such challenges should be filled in the same way that the original jurors were selected.

A central reservoir of jurors has been established in cities outside this Commonwealth, and it has worked satisfactorily. Such a system has been in use in New York City for four years, and has resulted in substantial savings in fees, judges' time and otherwise. The operation of such a system is much more difficult in New York than it would be in Massachusetts, because in New York lawyers are permitted to examine at length jurors drawn

for service on a petit jury, to ascertain which side of the controversy they may be expected to favor, while in this Commonwealth the only questioning of jurors so drawn is by the court. The central reservoir of jurors is also used in Cleveland, Ohio. The Chief Justice of the Court of Common Pleas in that city stated a few years ago that it had resulted in a saving of $40,000 in jury fees in a single year. The recommendation we now make is not, therefore, of an untested experiment, and precedents for all statutes and rules required to put it into effect are already in existence.

As we have stated, there are today eleven separate jury sessions in the one courthouse in Pemberton Square, Boston, approximately thirty jurors being assigned to each such session. With a central reservoir for jurors, we believe that it would be possible to dispense permanently with the services of one hundred jurors in Suffolk County; in other words, it would be possible to save annually the expense of one hundred juror-years in Suffolk County alone.

One argument made against a central reservoir of jurors is that there is at the present time no room in the Suffolk County courthouse large enough to accommodate two hundred people. This condition is merely an incident of the present inadequate court facilities of Suffolk County, and is one which ought soon to be corrected; but even if it is not, a central jury room should be provided in the present courthouse by breaking down the partitions between two of the large court rooms, or otherwise. No minor physical difficulty should be permitted to stand in the way of a clear improvement in the administration of justice.

After a man has become a member of a petit jury, he should not be expected to suffer unnecessary hardships in his service. Jurors should not be expected to spend long hours of the night in deliberation, when their patience has been tried to such an extent that they are unable to debate properly the points at issue. Jury deliberations should never continue beyond a reasonable hour of the

night. If the circumstances require it, provision should be made for the proper accommodation of the jury during usual sleeping hours, their deliberations to be resumed on the following morning.

We have considered carefully the suggestion often advanced of late that the requirement of a unanimous verdict in criminal cases be abolished — that the vote of ten of the twelve jurors be held sufficient to convict. We recommend that this suggestion be not adopted. The number of disagreements by jurors in Massachusetts criminal trials is much smaller than is generally supposed. From 1917 to 1927, 8,296 criminal cases were submitted to juries in Suffolk County, and in these cases there were only 201 disagreements. The minority at the outset of a jury's deliberations may have the right on their side; the considered judgment of all the jurors in a criminal matter, without short-cuts or yielding to majority views, is much to be desired. According to the avilable statistics, the Massachusetts insistence upon unanimity in criminal verdicts in the past has not resulted in any disturbing percentage of jury disagreements.

There is a strong and apparently growing public opinion which favors giving to judges the power to charge juries on the facts in criminal cases. Under our present law, the court determines the law in every criminal case, and the jury determines the facts. It is argued that the judge should be given the right to state also to the jury his opinion as to the guilt or innocence of the defendant, and as to the evidence which may support such guilt or innocence. Before considering this argument, let us consider what power the judge already has in Massachusetts when he arises to deliver his charge to the jury. We shall quote exactly from the language of the Supreme Judicial Court in a comparatively recent case:

> In any clear analysis of the evidence, however impartial, the attention of the jury necessarily must be directed to the weight and importance of particular facts which they may find to have been proved. If an unbiased analytical statement of the testimony and of the law distinctly indicates the party who is entitled to prevail, this furnishes

no just reason for the defeated party to complain, either of the method employed or of the adverse verdict. Besides, it is not a violation of the constitutional requirement that judges shall be "as free, impartial and independent as the lot of humanity will admit," if the instructions, while judicially fair, are comprehensively strong, rather than hesitatingly barren or ineffective, and neither the tone of a charge nor the form of verbal delivery are of themselves ground of exception, if no error of law appears. In a word, the judge who discharges the functions of his office is, under the statute as well as at common law, the directing and controlling mind at the trial, and not a mere functionary to preserve order and lend ceremonial dignity to the proceedings.

It seems clear from this decision that there is no necessity of enlarging the present power of our courts in this regard in jury trials of criminal cases.

The recommendations made herein may be summarized as follows:

1. The right to a jury trial for the settlement of disputed questions of fact in criminal cases should not be taken away.

2. Claims of the right to jury trial when jury trial is not in fact desired should no longer be encouraged by the forms of our criminal procedure.

3. The present qualifications for jury service in Massachusetts are adequate.

4. The selection of jurors possessing the requisite qualifications is a judicial function, and such selection should, therefore, be placed forthwith under the supervision of the judiciary.

5. The present practice of assigning twenty-five to thirty jurors to each jury session should be discontinued, and a central reservoir of jurors should be established for each courthouse in which two or more jury sessions are being held.

6. Jury service should be made as attractive as conditions permit, and no unnecessary hardship should accompany such service.

7. There is no apparent necessity at this time for changing the Massachusetts requirement of unanimity in jury verdicts in criminal cases.

8. Judges have sufficient power at the present time to enable them to guide juries properly in the consideration of questions of fact.

9. Jury service should be spread over a greater number of eligible voters by making persons ineligible for jury service more than once every three years. (See Appendix F.)

Indictments disposed of by Trial and on Plea of Guilty in Superior Courts, 1932.

[Figures from Table 70, Annual Report, Commissioner of Correction, 1932.]

Dispositions.	Whole State.		Suffolk.		Middlesex.		Hampden.		Worcester.		Berkshire.		Hampshire.		Plymouth.		Essex.	
	Number.	Per Cent.	Number.	Per Cent.	Number.	Per Cent.	Number.	Per Cent.	Number.	Per Cent.	Number.	Per Cent.	Number.	Per Cent.	Number.	Per Cent.	Number.	Per Cent.
Total indictments handled	7,397	100.0	2,765	100.0	1,231	100.0	164	100.0	488	100.0	67	100.0	131	100.0	406	100.0	539	100.0
Acquitted	480	–	308	–	51	–	6	–	20	–	2	–	10	–	11	–	27	–
Found guilty on plea of not guilty.	638	–	347	–	77	–	12	–	29	–	5	–	5	–	69	–	40	–
Total trials	1,118	15.1	655	23.7	128	10.4	18	10.9	49	10.0	7	10.4	15	11.4	80	19.7	67	12.4
Convictions after plea of guilty	3,182	43.0	909	32.9	535	43.4	112	68.2	309	63.3	26	39.0	81	61.7	188	46.3	316	58.6

Appeals disposed of by Trial and on Plea of Guilty in Superior Courts, 1932.

[Figures from Table 71, p. 109, Annual Report, Commissioner of Correction, 1932.]

Disposition.	Whole State.		Suffolk.		Middlesex.		Hampden.		Worcester.		Berkshire.		Hampshire.		Plymouth.		Essex.	
	Number.	Per Cent.	Number.	Per Cent.	Number.	Per Cent.	Number.	Per Cent.	Number.	Per Cent.	Number.	Per Cent.	Number.	Per Cent.	Number.	Per Cent.	Number.	Per Cent.
Total appeals handled . .	9,681	100.0	5,003	100.0	973	100.0	154	100.0	359	100.0	82	100.0	150	100.0	457	100.0	891	100.0
Acquitted	1,231	–	839	–	151	–	13	–	47	–	3	–	17	–	37	–	42	–
Found guilty on plea of not guilty.	879	–	427	–	132	–	25	–	50	–	–	–	15	–	95	–	62	–
Total retrials	2,110	21.8	1,266	25.3	283	29.0	38	24.6	97	27.0	3	3.6	32	21.3	132	28.8	104	11.7
Convictions after plea of guilty	5,245	54.2	2,458	49.0	524	54.0	90	58.4	206	57.4	23	28.0	68	45.3	245	53.4	632	70.9

Bail.

The public attention has been focussed upon the bail system by the disclosures in connection with the case of Charles Hoffman, escaped convict. We have, therefore, made a partial study and investigation of the Massachusetts bail system.

In all counties except Suffolk, bail commissioners are appointed by the Superior Court. In Suffolk County they are appointed by the sheriff. The duty of these bail commissioners is to examine the persons who present themselves as sureties for bail, to determine whether such sureties have property at least equal in value to the amount of bail which has been fixed.

From our investigation we are satisfied that defendants who are bailed at court have had their sureties carefully examined in the court clerk's office before they were approved. There are, however, a large number of defendants in serious criminal cases who are bailed after leaving court, in which cases bail commissioners make the examination of the surety or sureties offered at the jail; such examinations have not always been satisfactory. The system of examination of sureties by bail commissioners is, however, when properly administered, a very satisfactory method of handling bail in the less serious criminal cases, and we recommend that it be retained for use in such cases with the safeguards we shall suggest in this report.

In Suffolk County there are only two so-called professional bondsmen actively engaged in bailing defendants, and we have found no case in which these professional bondsmen have acted improperly. All professional bondsmen are registered by the Superior Court after an examination by a Superior Court judge as to their personal character and their property holdings and financial worth. They are required to furnish a detailed account of their doings once a month to the Chief Justice of the Superior Court. Periodically they must furnish a financial statement for the scrutiny of the court.

Besides professional bondsmen, there are two other classes of sureties in bail cases:

1. Incorporated surety companies.
2. Individuals.

So long as a surety company is permitted by the State Insurance Commissioner to conduct its business, it may issue bail bonds in criminal cases. The Superior Court under our statute has no power to require their registration with the court, nor has it the power to prohibit them from doing bail bond business.

Within two years the Lexington Surety and Indemnity Company, the Public Indemnity Company of New Jersey, the Grand Central Surety Company, the Greater City Surety and Indemnity Company, and the Lloyds Insurance Company of America, all licensed to do business here, have been put into receivership at a time when their bail bonds were outstanding in this State. Suffolk County alone has a claim of $18,000 in defaulted bail against one of these companies.

At present, only one surety company is doing any amount of bail bond business in the counties investigated. This company was prohibited last July from furnishing bail bonds in the District Court of the United States for the District of New York by Judge Woolsey because of alleged serious improprieties. The District Attorney of Suffolk County will not approve the bonds of this company. A justice of the Municipal Court of the City of Boston last September ordered a security of $10,000 to be posted with the clerk of court before this company would be permitted to do any more business in his court. Yet during this time many bail commissioners have regularly approved this company as surety in cases in which defendants were bailed out of jails and police lockups.

The same company furnished a bail bond of $5,000 for an individual who was convicted by a jury in Middlesex County as an abortionist in 1932. The defendant defaulted before sentence was imposed and her bail was ordered forfeited by the court. Suit was brought against the company to recover on its bond. A justice of the

Superior Court made an order more than a year ago that until that case was taken care of by the company no more bail bonds would be accepted from it in that court. Despite these facts, this company has been frequently approved as surety by bail commissioners in Superior Court cases. We are informed that this company has recently settled the $5,000 suit against it in Middlesex County by making a cash payment of $750.

Surety companies are not required to report the state of their finances to any one except the Insurance Commissioner, who makes a detailed audit not more often than approximately once in three years. These companies are not limited as to the amount they may charge for giving a bail bond, although professional bondsmen are so limited by the rules of the Superior Court. They sometimes have no substantial property within the State. The courts and the District Attorneys are powerless to require any information as to their affairs. The courts have no supervision over the appointment of their agents. In the past certain individuals who had been removed by the court as professional bondsmen for improper conduct later have acted as agents for surety companies in writing bail bonds, and apparently there is at present no way of preventing them from doing so.

We recommend that any surety company desiring to write bail bonds should be required to obtain the approval of the Superior Court and become registered in the same manner as a professional bondsman, subject to rules and regulations made by the Superior Court. The court would then have the power to prohibit the doing of bail business by any company which it had reason to believe was financially unsound or which permitted its agents to act improperly. A draft of an act to this end is appended to this report.

In addition to the professional bondsmen and the surety companies, private individuals have the right to offer themselves as bail sureties. Our statutes forbid any such individual from accepting a fee or a reward for becoming bail surety, but our investigations indicate

that there are certain individuals who appear to make a regular business of acting as bail in criminal cases for hire. Usually they act as bail for jail and station house cases only. The statutes prohibit any private individual from becoming bail surety on more than five separate occasions during any calendar year.

The bail commissioner has the duty of examining into the qualifications of any person who offers himself as bail surety at any of the jails. In many cases the bail commissioners perform this duty in a very perfunctory manner. Certain routine questions appearing on a printed form furnished by the bail commissioner are asked of the proposed surety. Almost invariably the bail commissioner will approve an individual as bail surety if he will sign and swear to answers to these questions. There appears to have been no exchange of information between the bail commissioners as to the number of occasions on which individuals have acted as bail sureties during the current year on more occasions than allowed by the statute. One of these men has acted as surety in eight cases in which the total amount of bail aggregated $20,000. Another one acted in at least seven cases in which the aggregate bail was $20,000. Still another acted in at least nine cases. One individual has appeared in twenty-four cash bail cases.

The bail commissioners do not ascertain the true value of the real estate claimed to be owned by these individuals. One of these private bondsmen testified before us that he had paid for all of the properties which he claimed to own a total amount of $1,000. All of them were subject to substantial mortgages and yet he was approved as surety in individual cases where the bail was $5,000.

The statute imposes a penalty on any person acting as surety on a bail bond for transferring or encumbering the real estate owned at the time of going on the bond, but there is no provision making the bail bond a lien on the real estate of the surety. Transfers of property owned by such persons are openly recorded in the Registry of

Deeds. There is no agency of the courts which at any time is required to check up on these transfers.

A notable instance of what has resulted from the laxity of our bail system is the case of Charles Hoffman, an escaped convict from the New Jersey State Prison, who was released on $40,000 bail in September of this year. The facts in this case are hereinafter stated in this report.

We recommend that a law be adopted providing that if any person is charged with a felony and the amount of bail is set by the court at $5,000 or more, no surety shall be approved on the bail bond until the surety has been examined by a court or by a clerk of court. Our investigations indicate that the examination of proposed sureties at the clerk of court's office is much more thorough than that made by bail commissioners.

At present the giving of a bail bond by a real estate owner creates no lien on the real estate. District Attorneys are naturally reluctant in the present state of the real estate market to go through the expensive procedure of a sheriff's sale on execution of the real estate securing a bail bond. When the bail is forfeited the District Attorney must bring suit as in any civil case, make a real estate attachment, procure judgment and levy execution. When all this has been done, it is likely that nobody will appear to bid at the sheriff's sale, and the result of this cumbersome and expensive procedure is not to produce the amount of the bail or any part of it. These difficulties cannot be entirely overcome, but some steps can be taken to lessen them.

We recommend that each bail bond contain a power of attorney to the District Attorney or clerk of court to confess judgment in the amount of bail after forfeiture by the court, which judgment shall be entered ten days after the forfeiture of the bail, and have appended a suggested draft of act.

We further recommend that a notice filed in the Registry of Deeds to the effect that a real estate owner has become surety on a bail bond shall create a lien on the real estate of such owner, just as taxes constitute a lien today, so

that there will be some likelihood of procuring a bidder at the sheriff's sale.

We recommend that District Attorneys should be required to keep a regular docket and list of all defaulted criminal cases in which there has been bail, showing the status of each case up to date, which list should include defaulted bail cases in District Courts of their districts of which they have been notified. Once each month the District Attorneys should furnish to the Chief Justice of the Superior Court a list of all of these pending cases which would show what progress has been made in each case during the previous month.

Suggestion was urged before us that no surety who offered real estate as security should be approved by a bail commissioner until complete verification by him of the statements made by the surety as to the ownership, location and value of his property. It was also suggested that the value of the real estate owned by a surety ought to exceed the amount of the bail; the suggestion generally made was that the value be one and a half or twice the amount of the bail. The Commission is not prepared to recommend the adoption of either of these suggestions, though it recognizes that there is virtue in both of them. We feel, however, that there are disadvantages which outweigh those virtues.

It should not be lost sight of that laws of general application like those dealing with the bail system operate not only in cases of habitual and professional criminals, but also in cases of first offenders, amateurs and even in cases of innocent persons charged with crime. Requirements which might be justifiable when applied to the professional gangster would be intolerably oppressive when applied to innocent persons, or even to those whose rehabilitation is reasonably possible. Bail is furnished generally before there has been any trial and thus before the status and conduct of the accused is determined. To hold innocent persons in jail until a complete verification of all of his sureties' statements could be had, or until a court came in, or to require too high security, is not jus-

tified by any exigency arising from the existence of the professional criminal. We are opposed to changes which might operate oppressively upon those who are innocent or merely unfortunate. (See Appendices G, H, I, J and K.)

The Case of Charles Hoffman.

Early in the evening of May 6, 1933, Charles Hoffman, alias William Sherman, alias William Brady, alias William Gallagher, was arrested in the Charlestown district of the city of Boston on four serious felonies; three of which were for an assault with a revolver, with an attempt to rob three individuals, and the fourth for armed robbery of $2,700 from another person. He was taken from Station 15 to Police Headquarters shortly after his arrest, where he was photographed and finger printed. A search was then made of the records, and a circular which contained his finger prints and photograph, stating that he had escaped from the State Penitentiary in New Jersey, was discovered. When confronted with this circular, Hoffman admitted that he was the person named in the circular and that he had on September 2, 1931, escaped from the New Jersey Prison Farm, where he had been confined from January 13, 1926, under a sentence of from ten to fifteen years for robbery. Hoffman made this admission in the presence of the Charlestown police officers and certain officers at Police Headquarters, and they were apprised at that time of the dangerous character of the prisoner.

The above-mentioned circular was in the possession of Police Headquarters since September 4, 1931. For several months prior to his apprehension in Charlestown, Hoffman had been engaged by a notorious rum runner in protecting transportation of liquor, and after the death of this rum runner he had secured employment in the same capacity for another rum runner. He had a residence in Boston where he lived with his wife, and seemed, for the time being at least, to have been permanently established here, when he was apprehended in Charlestown.

Immediately upon his identification at Police Head-

quarters on Saturday evening, May 6, 1933, Captain Gleavy notified the New Jersey warden of Hoffman's capture by a telegram, as follows:

Re William Sherman, your #8949 wanted by you for escaping Bordentown N. J. Prison Farm, 9–2–31, arrested here and we are holding him on a charge of robbery armed and assault with intent to kill.

On Sunday morning, May 7, 1933, the "Boston Herald" and the "Boston Globe" both had front page articles describing the crime for which Hoffman had been apprehended. The article in the latter paper stated that Hoffman had been taken to Boston Police Headquarters, "where it was found that Hoffman's picture was on file as having escaped from Jamestown, New York, Jail while serving a ten to seventeen year sentence."

Hoffman waived examination in the Charlestown District Court on Tuesday, May 9, 1933, and was bound over to the June sitting of the grand jury on a bond of $40,000. On this last-mentioned date, Captain Gleavy wired Colonel Stone, keeper of the New Jersey State Prison, as follows:

William Sherman held in $40,000. for the June sitting of the Grand Jury. Kindly forward warrant to enable us to obtain fugitive warrant.

Colonel Stone replied to Captain Gleavy on the afternoon of May 9, by wire, as follows:

Wire disposition of William Sherman Eight Nine Four Nine Escaped Prisoner. We are sending warrant to act as detainer.

On the same day a letter addressed to Captain Gleavy of Police Headquarters and enclosing a warrant for Sherman, was sent to Captain Gleavy. This letter stated as follows:

Enclosed, find warrant for William Sherman, #8949, escaped prisoner from the Bordentown Prison Farm, to act as a detainer against him. Kindly advise the disposition in his case, and an officer will be sent for him.

P.S. If this man is sentenced to another institution, kindly forward warrant with him.

It is undisputed that this letter containing the warrant for Hoffman was received at Police Headquarters on Wednesday, May 10, 1933. It was received by Sergeant Gaw, who stamped it "Received May 10, 1933, Bureau of Records."

Warrants from outside cities were at that time in charge of Sergeant Taylor, upon whose desk this New Jersey warrant lay from the time of its receipt on May 10, 1933, to June 18, 1933. Lieutenant Thompson on Saturday, June 17, 1933, called Captain Gleavy's attention to the fact that there was an accumulation of warrants piling up on Sergeant Taylor's desk. Thereupon, Captain Gleavy warned Taylor that the movement of warrants was an important matter and should not be neglected. Taylor, with the aid of another sergeant and two stenographers, cleared up all this correspondence on his desk on Sunday, June 18, 1933. On this day the warrant in question was mailed to Captain Grace, Division 15, together with a letter written by one of these stenographers, which stated as follows:

> Enclosed please find warrant from State of New Jersey for the arrest of William Sherman, alias Charles F. Hoffman, arrested by Sergeant Miller, Division 15, recently. Kindly have procured a fugitive warrant for this subject and return the enclosed warrant to us.

Captain Grace of Division 15 in a report on October 1, 1933, to the superintendent, stated that he never received this warrant, and that after an inquiry made by him of his subordinates, and after a diligent search through the records and papers at his station, he was "of the opinion that, however the papers were lost, it was an honest mistake." He was away from the station from May 7 to May 11, 1933, and claimed that he never learned that Hoffman was a fugitive from justice until several days after the latter had been bailed.

Captain Grace is supported by written statements of Sergeant Miller, the officer in charge of this case, and Officer Montgomery, who was in charge of the warrant files in this station, and who has stated that this warrant

was never received at Station 15, as there was no record of it in the warrant book; and that, furthermore, no warrant card was ever sent to the Headquarters showing the receipt of this warrant, because, in fact, it never was received. It is clear, however, that Sergeant Miller knew on May 6, 1933, and so did other officers in this Division, when the identification of Hoffman was established and admitted, that he was an escaped convict from New Jersey. Sergeant Miller, however, claims that the reason he did not secure a fugitive from justice warrant was because in previous cases he had received from the Bureau of Records a certified copy of the court records made in the sister State, and that on the basis of such a certified copy he had obtained a fugitive warrant, and he was waiting for a certified record in the Hoffman case before applying for a fugitive warrant.

The fact is that this New Jersey fugitive warrant was never lodged against Hoffman.

The Suffolk Grand Jury, early in June, 1933, indicted Hoffman for assault with an attempt to rob, and with assault with an intent to murder. Upon his arraignment, a motion made in his behalf to reduce his bail from $40,000 was denied, and he was committed to the Charles Street Jail to await trial. In opposing this motion for a reduction of bail, the court was informed that Hoffman was an escaped prisoner from New Jersey. Three times during the month of June, 1933, the witnesses were summonsed for the purpose of trial of this case, but it finally went off until October 20, 1933. When the witnesses first appeared in June, 1933, the assistant district attorney assigned to the prosecution of this case inquired of the officer in charge if he had a certified copy of Hoffman's conviction in New Jersey, and when he learned that the officer had not, the assistant district attorney then ordered a stenographer to secure this certified copy.

Hoffman had also been indicted in June, 1933, by the Middlesex Grand Jury for armed robbery. On June 14, 1933, he was taken to the East Cambridge Court and arraigned on this indictment, pleading "not guilty" and

being held in a sum of $20,000 for his appearance for trial in that county. An attested copy of the mittimus left at this jail on June 14, 1933, stated that Hoffman was charged with armed robbery and was held under bail of $20,000.

The District Attorney's office at East Cambridge sent a telegram on June 27, 1933, to the warden of the New Jersey State Prison, as follows:

> Warden of State Prison, Trenton, N. J. William Sherman alias Gallagher escaped from your institution is now held awaiting trial for robbery armed stop suggest you send a fugitive warrant for your protection stop He is under the name of Charles Hoffman.

On the same day and in reply to this wire, Joseph Hand, identification officer, New Jersey State Prison, sent the District Attorney of Middlesex County a letter enclosing a fugitive warrant for Sherman. The letter stated as follows:

> Enclosed, please find warrant against our William Sherman, #8949, alias Gallagher; your Chas. Hoffman, wanted here for escaping from the Bordentown, N. J. Prison Farm. Kindly advise what the disposition is in his case. We also filed a warrant on May 9, 1933, with Capt. Thos. F. Gleavy, Bureau of Records, Police Dept., Boston, Mass., but as you suggest that we file another warrant with you, for our protection, we are complying with your request. If you will advise what this man's disposition is on the robbery charge, an officer will be sent to take him into custody, in the event he is turned to us.

On June 28, 1933, on motion by the Commonwealth, Hoffman was ordered by the Superior Court to be remanded to the Charles Street Jail in Boston. The judge who made this order did not then know that Hoffman was an escaped convict from New Jersey, and stated to us that if he had had this information he would have denied the motion to remand Hoffman to the Boston jail, and would in all probability have ordered him held to await the arrival of the New Jersey warrant.

No criticism whatever can be made of the action of the court in remanding Hoffman under these circumstances to the Charles Street Jail, especially when the presiding

judge had previously taken the precaution to order that Hoffman should not be admitted to bail on the Middlesex indictment unless he furnished two sureties each in the amount of $20,000. In accordance with the said order made by the Superior Court, Hoffman was delivered to the custody of Boston police officers at the East Cambridge Jail on June 28, 1933, and by them taken to the Charles Street Jail of Boston, where he was confined until September 18, 1933.

The register at East Cambridge Jail contains a column in which the keeper is supposed to insert the number and times a prisoner has been previously committed. We have seen this register and have noted that the column in the case of Hoffman was blank. The fact is that nobody at this jail at the time he was delivered to the Boston officers seems to have known that Hoffman was a fugitive from justice. They knew, however, that he was held under high bail for a serious felony. Although Hoffman was at this jail for fourteen days, no photographs or finger prints were taken of him. The jailer assumed that photographs and finger prints were on file in the Boston Headquarters, and also at the State House.

At the time Hoffman was delivered to the Boston officers at the East Cambridge Jail, there was on file in the office of this jail a mittimus which, of course, ought to have accompanied the prisoner to the Charles Street Jail, so that in case he was bailed he would also be compelled to furnish bail in the Middlesex indictment in the sum of $20,000. He was, however, permitted to leave the East Cambridge Jail without this Middlesex mittimus, and consequently there was no record at the Charles Street Jail that he was also under bail in Middlesex County.

We summoned in the keeper of the Middlesex Jail and his assistant, to determine how this criminal was permitted to leave their jail without surrendering the mittimus to the Boston officers. Each of these officials had no recollection of the transaction and each thought that the other handled it. The keeper, however, stated that he would take full responsibility for this error. The Middlesex County

mittimus has always remained in the jail at East Cambridge and was produced by the keeper at the time he appeared as a witness before us.

The result of these circumstances was that from June 28 up to the time Hoffman was bailed, he was held at the Charles Street Jail only under the $40,000 bail ordered by the Suffolk Superior Court. That jail had no record of the Middlesex bail, and no fugitive warrant from New Jersey had been lodged against him. In other words, all that prevented him from gaining his liberty was the order for $40,000 bail on the Suffolk case. No warrant had been secured by either the District Attorney at East Cambridge, or the Boston police, for his arrest as an escaped convict.

One Rozman, who for years has been active in bailing prisoners, and who is also the agent of the Concord Casualty and Surety Company, saw Hoffman at the Charles Street Jail, but declined to have his company furnish bail because he believed that Hoffman would default. Rozman was experienced in matters of this kind and he immediately sensed the situation. It was apparent to him that if this criminal ever secured his freedom, he would not stand trials in Boston and in Cambridge and then fight extradition to New Jersey. It was certain that he would receive a lengthy term of imprisonment either in this Commonwealth or in New Jersey. Rozman, however, was anxious to secure the release of Hoffman. In fact, Rozman's company had bailed Cooper, the codefendant with Hoffman, in the Charlestown cases. Rozman knew that one Sullivan was friendly with James M. Burr, a well-known straw holder of real estate. He and Sullivan had been engaged in previous bail transactions in which Burr had furnished surety. The Suffolk County District Attorney's office had previously, on another matter, declined to take Burr as surety. There was, however, no record at the Charles Street Jail that the District Attorney's office desired to be heard on the sufficiency of the surety in the event of Hoffman seeking bail. The District Attorney was not

required, under the law, to insist upon examination of the surety, although this had been done in some cases as a matter of precaution.

On the evening of September 18, 1933, Rozman telephoned Sullivan to have him secure Burr as surety, and Sullivan did so, meeting Rozman at the Charles Street Jail. Rozman telephoned to one Goggin, a bail commissioner. Burr offered certain premises on Hemenway Street in order to qualify him as surety, and this bail was accepted. Hoffman was liberated and left the jail accompanied by Rozman. The property that Burr offered to qualify him as surety he did not own, although he produced a tax bill running to him. The fact was that this property had been transferred by Burr by a deed which had been recorded on May 18, 1933.

Rozman and Sullivan both testified before us, and both claimed that they had not received a cent for their participation in the liberation of Hoffman. We believe that the release of this notorious criminal was planned, and that a consideration was paid therefor. We are inclined to believe Burr's story that he has never received any compensation for bailing Hoffman.

Hoffman had temporarily won his freedom. He was a daring, reckless criminal. He did not leave the Commonwealth upon his release from the Charles Street Jail. He had certain connections in this city, and it was, we believe, through these connections that he was enabled to gain his freedom. Within five days of his release he appears again to have taken up his career as a bandit in the very city in which he had secured his release, and, in fact, in the identical district where he had been apprehended on May 6, 1933. On September 23, 1933, a truck containing $6,500 worth of cigarettes was stolen on a public highway in the Charlestown district. The officer who was in charge of the Hoffman case of May 6, 1933, began an investigation into the theft of this truck and learned on September 29, 1933, that one who had received a portion of the loot from this stolen truck picked out Hoffman's photograph at Police Headquarters as the

one who sold him the goods. The officer's suggestion that this witness must be mistaken, only served to strengthen the positive identification of Hoffman by the witness. The officer then communicated with the Charles Street Jail and learned that Hoffman had secured his freedom on September 18, 1933. The Boston Police then knew that Hoffman was at large and that he was again pursuing his criminal career.

The Suffolk indictment against Hoffman was placed on the trial list for Friday, October 20, 1933. Burr had received a postal card to this effect on Thursday, October 19, which he turned over to Sullivan, who in turn communicated with Rozman and left it on that afternoon at the latter's office. The case was called at the morning session on October 20, 1933, and continued until two o'clock in the afternoon. Hoffman's codefendant, Cooper, answered to the indictment; Hoffman did not. On the same day an aged inventor named Adolph Sommer was murdered in Cambridge. Hoffman was tentatively identified from a photograph as one of the gang of killers. One of the witnesses of this killing was brutally assaulted shortly after he had given information to the police. Hoffman has not been apprehended.

Immediately after the deafult of Hoffman, the Suffolk Superior Criminal Court ordered suit to be brought against the surety. Attachments were promptly made in an effort to collect bail in the amount of $40,000. Burr for years has had a small bank account, where the balance seldom exceeded $100, and after that he had an account in another bank in which for months there was no balance. He was seventy-five years of age, living in a cheap hotel in the West End of Boston, occupying a room for which he paid $6 a week. He was in default on other bail matters in substantial amounts. It is reasonably certain that not a single dollar can be realized upon this Hoffman bail.

Soon after Hoffman was released from the Charles Street Jail, this Commission was informed that this was a matter that should have our attention. We began an investigation of the situation, as everybody who was

familiar with the facts knew that Hoffman would not answer to his indictments. On October 19, 1933, we made a serious but unsuccessful effort to secure from the Boston Police Department the details concerning the New Jersey warrant, and were unable to do so. We then made a written request upon the Police Commissioner for information concerning this whole case, and under date of October 21, 1933, were furnished with certain information.

The day after Hoffman was defaulted and after the Cambridge murder, Joseph Hand, identification officer of the New Jersey State Prison, received the following letter from John M. Anderson, deputy superintendent, Boston Police, to wit:

> On May 9, 1933, you sent to this department a warrant for William Sherman, your number #8949, an escaped prisoner from the Bordentown Prison Farm, to act as a detainer against him. In some manner which we are unable to understand, your warrant became mislaid and was not lodged against him. Sherman was released in $40,000.00 for his appearance in court here next week. In order that we may hold him for you, we urge you to forward us a copy of the original warrant so that we may obtain a fugitive from justice warrant and lodge it against him as a detainer. Please accept my apologies for this error. Every step possible will be taken to protect your interests in this case.

and under date of October 21, 1933, Mr. Hand made the following reply to Deputy Superintendent Anderson, to wit:

> Enclosed find triplicate warrant to act as a detainer against one William Sherman, #8949, an escaped prisoner from our Prison Farm at Bordentown, N. J. We filed a warrant on May 9, 1933 with Capt. Thos. F. Gleavy, Bureau of Records, Police Dept., Boston, Mass., and another warrant on June 27, 1933 with Warren L. Bishop, District Attorney, Cambridge, Mass. In the event that he is sentenced to a penal institution in your State, kindly see that the enclosed warrants accompany him, as we are desirous of having him returned here as a fugitive.

On October 23, 1933, in answer to a telephone request by District Attorney Foley of Suffolk County, Colonel Stone wired Mr. Foley as follows:

Have sent triplicate warrants to act as detainers against William Sherman escaped prisoner stop May ninth nineteen thirty three Filed warrant with Captain Gleavy stop June twenty seven filed warrant with Warren Bishop District Attorney Cambridge Mass. stop October twenty one filed warrant with John Anderson Superintendent Police Department Boston Massachusetts.

On October 24, 1933, Burr was arrested for perjury alleged to have been committed before the bail commissioner, alleging that he owned the Hemenway Street property at the time he was accepted as bail for Hoffman. Burr has since been indicted and is now held in $40,000 bail for trial. The bail commissioner has been suspended.

Soon after the Cambridge murder, Hoffman's automobile was located at a garage in Roslindale. This garage was heavily guarded by the Boston Police, and early in the afternoon of October 26, 1933, two persons approached this garage, but when the police threatened to open fire, the two men jumped into their automobile and escaped in a rain of bullets. The registration number of this car was immediately telephoned to the Boston Police Headquarters and at 1.10 P.M. a teletype message was broadcast which gave the wrong registration number. This message was again repeated, giving the incorrect registration number, ar 2.15 P.M. A third message correcting this mistake was broadcast at 2.35 P.M. In other words, the incorrect information gave the gangsters in the escaped car a lead of an hour and twenty-five minutes. These two men, however, were arrested early the next morning in Wrentham. One of them has already been sent to State Prison on an old case, and the police are engaged in an attempt to further strengthen their case against them and Hoffman on the Cambridge murder charge.

Hoffman's automobile was registered in a fictitious name and at a false address, and the same is true of the registration of the automobile in which the two gangsters escaped from the Roslindale garage on October 26, and which later was found at the time of the arrest in Wrentham on the morning of October 27.

Shortly after Hoffman's arrest on May 6, 1933, while

the police were searching his home in Roslindale, one Samuel Cooper entered the house and was promptly arrested. He was jointly indicted in Suffolk County with Hoffman on indictments charging assault with intent to rob, and with intent to murder. He was convicted for these indictments on Tuesday, October 31, 1933. His motion for a stay of sentence was denied, and the court sentenced him to a term of not less than six nor more than eight years at State Prison.

The bail commissioner has been suspended and a captain and two sergeants have been reprimanded by the Superintendent of Police.

The record of this case speaks for itself.

Warrants and Search Warrants.

We have found a lack of uniformity in the practice of various police departments and courts in the following up of search warrants and warrants for arrest.

There is no statutory provision governing police officers relative to warrants which they do not in fact execute. The result has been a variety of haphazard methods of keeping track of such warrants in different localities. In one court an unwritten rule requires a police officer to return a search warrant with a statement of the efforts he has made to execute it not later than seven days from the date of its issuance, and all other warrants with a like statement not later than thirty days after issuance. This rule keeps the court informed concerning the activity of the police, and stimulates the police to make diligent efforts to execute the warrants entrusted to them. Often, however, there are not even informal rules governing the police in this matter.

According to the figures reported to the Department of Correction by the clerks of District Courts, there were 12,998 criminal cases in those courts in 1931 in which no arrests were made, and in 1932 there were 9,032 such cases. We recognize that in many of these cases the police were unable to locate accused persons even after intelligent and faithful search, but we believe that the failure to

arrest in many others has resulted in some measure from the lack of supervision over police execution of warrants.

Under the present system it is comparatively easy for any policeman to file and forget a warrant entrusted to him for execution. The clerks of court are not required to follow up warrants after they have been delivered to the police for execution, and in many cases the clerks pay no attention to them after such delivery. There has come to our attention a police department in one of our smaller cities which has in its possession more than 750 unexecuted warrants which have been returned to court. Some of them date back as far as 1925, and they were issued on complaints for crimes ranging from drunkenness and nonsupport to felonies. The court by which this large number of warrants was issued has no present means of knowing what effort, if any, was made by the police to apprehend the accused persons. There are reasons for believing that some of the persons named in these warrants are walking the streets of that city, and yet the police claim to be unable to execute the warrants upon them.

A similar situation exists with reference to search warrants. In 1930, of 9,556 search warrants issued in connection with liquor offences, 533 were never executed; in 1931, of 8,520 such search warrants, 464 were never executed.

We recommend that any officer who receives a warrant for the arrest of an accused person or a search warrant be required to return the warrant within a reasonable time to the court which issued it, with a statement of what he has done pursuant to it. If the warrant is returned unexecuted, the officer should be required to state to the court what effort he has made to execute the warrant. If the court is satisfied on such statement that proper effort has been made to execute the warrant, the police officer should then file the warrant with the court.

A suggested form of amendment to the statutes to carry out these recommendations is appended. (See Appendix L.)

Petty Offences.

All law breakers are not criminals. Failure to recognize this fact has thrown out of gear our machinery for the repression of crime. The confusion of ideas and procedure in this respect, while unfortunate, is easy to understand and was probably unavoidable. A great number of new rules became necessary as new inventions came into being and society became more and more complex. To enforce these rules it was necessary that penalties be provided for their violation. The only available organizations for the imposition of such penalties were the criminal courts, and so these courts were availed of to punish violations of all these laws, even though many such violations involved no criminal intent whatever. As a result a great number of minor offences which were in fact only breaches of civil regulatory statutes came to be classified as "crimes," and those committing such breaches were treated as criminals.

There is no justification for treating an insignificant infraction of a local ordinance or a regulatory law with all the formalities which surround the treatment of a crime. Nevertheless, persons complained of for these minor offences are today either arrested on warrant or are brought into court on summons. They are arraigned and asked to plead guilty or not guilty to a criminal charge. Their convictions are entered as criminal records, and these records pursue them through their subsequent lives, often seriously handicapping them in the taking of civil service examinations and in other matters. They have the right to appeal any case in which they are found guilty in the district court, and thereby to procure a complete rehearing before a judge and jury in the Superior Court. They must furnish to probation officers and others detailed personal information concerning themselves and their antecedents, a requirement which is as irritating as it is unnecessary.

Leaving the consideration of the present situation

from the standpoint of those accused of petty offences, and considering it from the standpoint of the State, our present procedure results in an incredible amount of wasted effort and expense. Of the 202,350 defendants brought before the District Courts during the year ending September 30, 1932, two-thirds were charged with either drunkenness or motor vehicle offences. Many of these defendants appealed their cases to the Superior Court, congesting the dockets of that court to such an extent as to make it impossible to handle real criminal offences properly. District Attorneys are justifiably averse to the trial of minor automobile cases before a jury; they prefer to nol pros such cases and thereby save their counties the substantial expense of an uncertain jury trial. It is an absurd procedure to conduct a jury trial to determine whether a $5 or $10 fine for a violation of a non-criminal regulation was properly imposed.

Petty infractions of simple regulatory laws should not, therefore, be treated as crimes. The difficulty in applying this self-evident rule lies in the determination of what particular offences should be removed from the jurisdiction of the criminal courts. At some time a detailed examination of the entire body of our law should be made, and all petty offences should then be eliminated from the classification of crimes and from treatment by the criminal courts. Pending such a complete reclassification, we recommend that minor motor vehicle offences be hereafter submitted to administrative rather than to criminal treatment.

In 1929 the Department of Public Works made a thorough investigation to determine the best method for the non-criminal disposition of minor automobile cases, considering various suggestions to this end and examining the methods actually in use for the handling of such cases in the cities of Detroit, Chicago, Kansas City, Los Angeles and San Francisco. From that study a plan was evolved and a draft of legislation was presented to carry the plan into effect. The draft of legislation then presented, how-

ever, contemplated a non-criminal handling not only of parking violations and the like, but also of offences against the statutory law of the road and against other statutes. We are of the opinion that violations of statutes should not be included in such legislation at the time it is first adopted, but that non-criminal disposition of cases should be first tried out in connection with violations of regulations of the Department of Public Works and of city or town ordinances. We are also of the opinion that the legislation then proposed would result in certain mechanical difficulties, particularly with respect to procuring the signature of the offender and giving him personal notice at the time and place of his offence. There is annexed hereto a draft of the statute similar to that suggested by the Department of Public Works, with changes as we have indicated. We recommend that this legislation be adopted.

The underlying thought of this proposed legislation is that we should eliminate from classification as crimes those motor vehicle offences which do not of themselves involve the idea of criminal intent and which have not been found to be directly related to the question of public safety. Under the legislation suggested, an offender against a minor motor vehicle regulation would receive a notice requiring him to appear before the clerk of a District Court at any time during office hours not later than five days after his offence. Such an offender, or his representative, could then go to the clerk's office and pay the amount prescribed for his violation. The amount to be paid for various offences would be established by the Chief Justice of the Boston Municipal Court and by the administrative committee of the District Courts. An offender who refused to appear before the clerk, one who wished to contest the fact of his violation, or one who was a persistent violator of the motor vehicle laws would be brought into court as he is today.

Such a procedure would result in a minimum of formality and expense. It would eliminate the present unnecessary burden placed upon the motorist. Under existing

procedure the motorist, no matter how petty his offence, must come to court on a fixed date and lose a substantial amount of time from his business waiting for his case to be reached. This is an especially annoying and unjustifiable waste of time when it is discovered that the great majority of motorists desire to plead guilty when charged with such offences; of the 48,778 convictions in all lower courts for minor automobile offences in the year ending September 30, 1932, 39,854 of the defendants pleaded guilty, and in the Municipal Court of the City of Boston for the year ending September 30, 1933, the defendants in 6,119 out of 7,781 traffic cases pleaded guilty. The method of procedure suggested would also result in a desirable equality in sentences for the same offence, in place of the substantial variations in penalties for similar offences which occur today. The saving of the time of judges and police officers which would result from the proposed legislation need not be enlarged upon. Probably the greatest advantage would be the relief of our present-day court congestion, which would leave the courts with sufficient time to handle properly the cases of genuine criminals. (See Appendix M.)

CONCLUSION.

There were other matters relating to the apprehension, conviction and punishment of offenders which were investigated by the Commission and concerning which we received evidence. Some of these are of major importance. Among them are the parole and prison systems of the Commonwealth.

We have made no recommendations relating to them for the reasons that we have not had sufficient time or appropriation to make such an extensive investigation as to warrant us in submitting definite recommendation for correction and reform.

Furthermore, if we are right in believing that a thorough overhauling of our legal machinery is necessary to enable it to function properly under modern conditions of

criminal activity, time will be required to adopt the necessary legislation and to make the inevitable readjustments. In this period other parts of the machinery will doubtless be subjected to scrutiny and investigation.

The Commission reports that it expended the sum of $9,930.56, for which vouchers have been filed with the proper authorities. This left a balance of $69.44 of the authorized appropriation unexpended.

Appendix A.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Thirty-Four.

An Act relating to Gambling Devices.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Chapter two hundred and seventy-one of the General Laws (Tercentenary edition) is hereby amended by inserting after section five the following new sections: —

Section 5A. Any person who has in his possession, or under his control, or who permits to be placed, maintained, used or kept in any room, space, enclosure or building, owned, leased or occupied by him, or under his management or control, (1) any machine, apparatus or device, into which may be, or might have been, inserted any piece of money or other object, and from which, as a result of such insertion, or as a result of such insertion and the application of physical or mechanical force, may issue, or might have issued, (*a*) any piece or pieces of money, or any check, slug, token or ticket which may be exchanged for money or given in trade or used for additional chances, or (*b*) in addition to merchandise or other things of value which such machine, apparatus or

device purports to sell, lend or give away, any piece or pieces of money, or any check, slug, token or ticket which may be exchanged for money or given in trade or used for additional chances; or (2) any machine, apparatus or device of any kind or nature by the use or operation of which there is an element of chance for the return of, or for the winning or losing of, any money or other things of value, shall be punished, if said machine, apparatus or device is set up for public patronage, by a fine of not more than one thousand dollars and imprisonment in the common jail for not more than one year, and upon a second or subsequent conviction shall be sentenced to imprisonment in the common jail for a term of not less than two years.

Section 5B. Any person who sells, rents, leases, lets on shares, lends or gives away, or offers to sell, rent, lease, let on shares, lend or give away, or has in his possession with intent to sell, rent, lease, let on shares, lend or give away, or advertises or offers or exposes for sale, loan or distribution, any machine, apparatus or device of the kind or nature specified in the preceding section, knowing that said machine, apparatus or device is to be set up for public patronage, shall be punished by a fine of not more than one thousand dollars and imprisonment in the common jail for not more than one year, and upon a second or subsequent conviction shall be sentenced to imprisonment in the common jail for a term of not less than two years.

Appendix B.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Thirty-Four.

An Act relating to the Seizure and Forfeiture of Certain Moneys.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Section 1. Clause eleven, section one of chapter two hundred and seventy-six of the General Laws (Tercentenary edition), is hereby amended by inserting after the words "personal property" in the forty-sixth line the following: — and the money contained in such apparatus or exposed and available for use as stakes, — so as to read as follows: — Eleventh, Gaming apparatus or implements used or kept and provided to be used in unlawful gaming in any gaming house, or in any building, apartment or place resorted to for the purpose of unlawful gaming, and the furniture, fixtures and personal property, and the money contained in such apparatus or exposed and available for use as stakes, found in such place at a time when persons are engaged in unlawful gaming.

Section 2. Section seven of chapter two hundred and seventy-six of the General Laws (Tercentenary

edition) is hereby amended by inserting after the word "county" in the tenth line the following: — and the money described in said clause eleven shall be forfeited and ordered paid to the treasurer of the commonwealth, — so as to read as follows: — *Section 7.* If, upon the trial, the property is adjudged forfeited, the type, forms, press, woodcuts, raw material and mechanical apparatus described in clause eight of section one, the dies, plates, brands, moulds, engravings, printing presses, types or other tools, machines or materials described in clause five of said section, the raw materials, tools, machinery, implements, instruments and personal property described in clause nine of said section, and all furniture, fixtures and personal property described in clause eleven of said section, or so much thereof as the court or justice may order, shall be sold by the sheriff and the proceeds paid to the county, and the money described in said clause eleven shall be forfeited and ordered paid to the treasurer of the commonwealth, and the remainder of the property shall be destroyed as the court or justice may order. The court or justice may order any article not found to have been unlawfully used or intended for unlawful use, or any article unlawfully used without the knowledge of its owner, lessor or mortgagee, to be delivered to the party legally entitled to its possession.

Appendix C.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Thirty-Four.

An Act to establish a Metropolitan Police Commission.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Section 1. The governor, by and with the advice and consent of the council, shall appoint a police commissioner who shall be known as the metropolitan police commissioner. The metropolitan police commissioner shall hold office for a term of seven years, beginning with the first Monday of May in the year nineteen hundred and thirty-four. If a vacancy occurs in the office of metropolitan police commissioner by resignation or otherwise, the governor shall in like manner appoint a commissioner for the residue of the term in which the vacancy occurs. The commissioner may be removed by the governor, with the advice and consent of the council, for such cause as he shall deem sufficient. Such cause shall be stated in his order of removal.

Section 2. Said commissioner shall appoint a secretary, who shall be exempt from civil service law, who shall be sworn to the faithful performance of his

duties, and who shall keep such records, issue such notices and attest such papers and orders as said police commissioner shall direct. His term of office shall be three years, but he may be removed by said police commissioner for such cause as he shall deem sufficient. Such cause shall be stated in the order of removal.

SECTION 3. The annual salary of the metropolitan police commissioner shall be nine thousand dollars, and of the secretary, five thousand dollars, which shall be paid in monthly installments by the commonwealth. Said police commissioner may employ such clerks, stenographers and other employees as he may deem necessary for the proper performance of the duties of his office. On or before the first Monday of January in each year, said commissioner shall make a report of his proceedings to the governor. The records of the metropolitan police commissioner shall at all times be open to the inspection of the governor, the mayors of the several cities, and the chairman of the board of selectmen in the several towns, within the metropolitan police district.

SECTION 4. The jurisdiction and powers of the police commissioner shall extend to and may be exercised in the cities of Boston, Cambridge, Chelsea, Everett, Lynn, Malden, Medford, Melrose, Newton, Quincy, Revere, Somerville, Waltham and Woburn, and in the towns of Arlington, Belmont, Braintree, Brookline, Canton, Dedham, Dover, Hingham, Hull, Lexington, Milton, Nahant, Needham, Reading, Saugus, Stoneham, Swampscott, Wakefield, Watertown, Wellesley, Weston, Weymouth, Winchester

and Winthrop; which cities and towns shall constitute the metropolitan police district. The police forces maintained in the cities and towns of the metropolitan police district, together with the police forces maintained by the metropolitan park commission upon the effective date of this act, shall be consolidated into a single police force under the jurisdiction of the metropolitan police commissioner. The said commissioner shall have authority to appoint, establish and organize the police force of the district and make all needful rules and regulations for its efficiency. Except as otherwise provided herein, all the powers and duties now conferred or imposed by law upon the police commissioner in the city of Boston, or upon the chiefs of police in the various cities and towns of the metropolitan police district, are hereby conferred and imposed upon the metropolitan police commissioner. All licenses issued by said commissioner shall be signed by his secretary and recorded in the office of the commissioner.

SECTION 5. The members of the police forces in the various cities and towns, including reserve police officers, together with the members of the metropolitan park police, in office when the said metropolitan police commissioner is first appointed, shall continue to hold their several offices until removed or placed on the retired list by the said metropolitan police commissioner in accordance with law. All police officers in office on said effective date or later appointed by said metropolitan police commissioner shall have and exercise within the limits of the metropolitan police district all the powers conferred by law upon constables, except in relation to the service of civil

process, and all the powers conferred upon the police as watchmen.

SECTION 6. The said commissioner may organize the metropolitan police district into such police stations as he shall deem wise for the efficient administration of the metropolitan police. The office of police commissioner of the city of Boston shall be abolished when the metropolitan police commissioner takes office. The chiefs of police in the various cities within the metropolitan police district having a population of one hundred thousand or over, and the superintendent of the Boston police, in office upon said effective date, shall be appointed by the metropolitan police commissioner to the office of deputy chief in the metropolitan police. The chiefs of police of all other cities and all towns with a population of thirty thousand or over, so in office, shall be appointed by said commissioner to the office of captain in the metropolitan police district. The chiefs of police in towns having a population of over five thousand and under thirty thousand, so in office, shall be appointed by said commissioner to the office of lieutenant in the metropolitan police force. The chiefs of police in the towns having a population under five thousand, so in office, shall be appointed by said commissioner to the office of sergeant in the metropolitan police.

SECTION 7. All expenses for the maintenance of buildings, the pay of the police, clerks, stenographers and other employees, and all incidental expenses incurred in the performance of the duties of the said commissioner, or in the administration of said police,

shall be paid by the commonwealth, and the state treasurer shall pay the same upon requisition by said police commissioner. The supreme judicial court, sitting in equity, shall, on the application of the metropolitan police commissioner, and after notice to each of the cities and towns hereinbefore named, appoint three commissioners who shall not be residents of said cities and towns, who shall, after due notice and hearing and in such manner as they shall deem just and equitable, determine the proportion in which each of said cities and towns shall annually pay money into the treasury of the commonwealth to meet the expenses of the metropolitan police. The amount of money required each year from each city and town within the metropolitan police district to meet the expenses of the metropolitan police district and the deficiency, if any, shall be estimated by the treasurer of the commonwealth in accordance with the proportion determined as aforesaid and shall be included in and made a part of the sum charged to such city and town, to be assessed upon it in the apportionment and assessment of its annual state tax, and said treasurer shall in each year notify each city and town of the amount of such assessment and the same shall be paid by the city or town into the treasury of the commonwealth at the time required for the payment and as part of its state tax. The proportion to be paid by each of the cities and towns shall be subject to revision every five years by a commission appointed in the same manner as that which determined the proportions in the first instance.

SECTION 8. Nothing in this act shall affect the laws regulating the sale of intoxicating liquors in the

several cities and towns within the metropolitan police district.

SECTION 9. All property, real and personal, now used by the police forces of the various cities and towns within the metropolitan police district and by the metropolitan park police, shall become the property of the commonwealth and shall be administered on behalf of the commonwealth by the metropolitan police commissioner. If such real and personal property shall not, in the judgment of the metropolitan police commissioner, be in proportion to the population and assessed valuation of any such city or town, then, upon application of the metropolitan police commissioner, the commissioners appointed under section seven shall determine what assessments shall be levied on such city or town in order that its contribution to the assets of the metropolitan police force may be in proportion to its population and valuation. Moneys thus assessed shall be collected as provided under section seven and shall be held in a special fund to be known as the Metropolitan Police Fund, and shall be expended for the purchase of capital assets for which otherwise bonds would be issued.

SECTION 10. All acts and parts of acts inconsistent with this act are hereby repealed.

SECTION 11. This act shall take effect on the first Monday of May in the current year, except that the governor may appoint the metropolitan police commissioner on or after the first Monday of February in said year.

Appendix D.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Thirty-Four.

An Act creating Judicial Circuits.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Section 1. Section one hundred and eight of chapter two hundred and thirty-one of the General Laws (Tercentenary edition) is hereby amended by striking out said section and inserting in place thereof the following: —

Section 108. There shall be an appellate division of each district court for the rehearing of matters of law arising in civil causes therein. The appellate division of each district court, including the municipal court of the city of Boston, shall be holden by justices of such courts, not exceeding three in number out of five justices assigned to the performance of such duty by the chief justice of the supreme judicial court, as follows: Such last mentioned chief justice shall assign five justices of district courts, including the municipal court of the city of Boston, and within the county of Suffolk, to act in the appellate division of such district courts and municipal court of the city of Boston within that county,

which shall be known as the first judicial circuit; shall assign five justices of district courts within the counties of Essex and Middlesex to act in the appellate divisions of such district courts within those counties, which shall be known as the second judicial circuit; shall assign five justices of district courts within the counties of Norfolk, Plymouth, Barnstable, Bristol, Dukes and Nantucket to act in the appellate divisions of such district courts within those counties, which shall be known as the third judicial circuit; and shall assign five justices of district courts within the counties of Worcester, Franklin, Hampshire, Hampden and Berkshire to act in the appellate divisions of district courts within those counties, which shall be known as the fourth judicial circuit. Such assignment may be made for such period of time as such chief justice may deem advisable. In each of the foregoing four judicial circuits one of the justices so assigned shall be designated by the chief justice of the supreme judicial court as presiding justice, who shall from time to time designate those of the appellate justices who shall act upon appeals in each district court in that judicial circuit and direct the times and places of sittings. Two justices shall constitute a quorum to decide all matters in an appellate division.

A justice acting in the appellate division of a district court other than the court of which he is a justice shall be allowed in addition to his compensation as such justice the sum of dollars for each day he so acts, and his necessary traveling expenses, incidental expenses and necessary clerical assistance while so acting, to be paid by the county in which he so acts, upon his certificate approved by

the county commissioners; provided, that the total sum expended for such incidental expenses and clerical assistance shall not exceed in any year the sum of dollars in the first judicial circuit, the sum of dollars in the second judicial circuit, the sum of dollars in the third judicial circuit, and the sum of dollars in the fourth judicial circuit; and no deduction shall be made from the compensation of such justice under section six of chapter two hundred and eighteen on account of compensation paid to a special justice of his court for service at any session which such justice is unable to hold by reason of so acting.

Any party to a cause brought in the municipal court of the city of Boston after August thirty-first, nineteen hundred and twelve, or in any other district court after September thirtieth, nineteen hundred and twenty-two, aggrieved by any ruling on a matter of law by a single justice, may, as of right, have the ruling reported for determination by the appellate division when the cause is otherwise ripe for judgment, or sooner by consent of the justice hearing the same. The request for such a report shall be filed with the clerk within five days after notice of the ruling, and when the objection is to the admission or exclusion of evidence, the claim for a report shall also be made known at the time of the ruling. The justice whose ruling is complained of shall not sit upon the review thereof. If the appellate division shall decide that there has been prejudicial error in the ruling complained of, it may reverse, vacate or modify the same or order a new trial in whole or part; otherwise it shall dismiss the report, and may impose double costs in the action if it finds

the objection to such ruling to be frivolous or intended for delay. If the party claiming such report shall not duly prosecute the same, by preparing the necessary papers or otherwise, the appellate division may order the cause to proceed as though no such claim had been made, and may in like manner impose costs. A single justice may, after decision thereon, report for determination by the appellate division any case in which there is an agreed statement of facts or a finding of the facts or any other case involving questions of law only. If a single justice is of opinion that an interlocutory finding or order made by him ought to be reviewed by the appellate division before any further proceedings in the trial court, he may report the case for that purpose and stay all further proceedings except such as are necessary to preserve the rights of the parties.

SECTION 2. Section forty of chapter two hundred and eighteen of the General Laws (Tercentenary edition) is hereby amended by striking out said section and inserting in place thereof the following: —

Section 40. Justices of district courts, including the municipal court of the city of Boston, may hold court for civil or criminal business in any district court within their judicial circuit, as defined in section one hundred and eight of chapter two hundred and thirty-one, and have and exercise all the duties and powers of the justice thereof.

The appellate justices, or a majority of them, of each judicial circuit may from time to time make assignment for the attendance of a justice at the several times and places appointed for holding court for civil or criminal business in each of the district

courts within that judicial circuit. They may, if in their opinion the public business so requires, provide for additional sessions in each of the said district courts.

SECTION 3. Section forty-three of chapter two hundred and eighteen of the General Laws (Tercentenary edition) is hereby amended by striking out in the first and second lines the words "The justices, or a majority of them, of all the district courts, except the municipal court of the city of Boston," inserting in place thereof the following: — The appellate justices, or a majority of them, of each judicial circuit, as defined by section one hundred and eight of chapter two hundred and thirty-one, — so as to read as follows: — *Section 43.* The appellate justices, or a majority of them, of each judicial circuit, as defined by section one hundred and eight of chapter two hundred and thirty-one, shall from time to time make and promulgate uniform rules regulating the time for the entry of writs, processes and appearances, the filing of answers and for holding trials in civil and criminal actions, the preparation and submission of reports, the allowance of reports which a justice shall disallow as not conformable to the facts, or shall fail to allow by reason of physical or mental disability, death or resignation, the reporting of cases reserved for report when a justice shall fail to report the same by reason of physical or mental disability, death or resignation, the granting of new trials, and the practice and manner of conducting business in cases which are not expressly provided for by law, including juvenile proceedings and those

relating to wayward, delinquent and neglected children.

SECTION 4. Section fifty of chapter two hundred and eighteen of the General Laws (Tercentenary edition) is hereby amended by striking out, in the second, third, fourth and fifth lines, the words "Said court may from time to time make rules for regulating the practice and conducting the business therein in all cases not expressly provided for by law."

SECTION 5. Section fifty-two of chapter two hundred and eighteen of the General Laws (Tercentenary edition) is hereby amended by striking out said section and inserting in place thereof the following: —

Section 52. A special justice of the municipal court of the city of Boston when assigned for holding an additional session in said court shall have and exercise all the powers and duties of a justice of that court. His compensation shall be thirty dollars for each day's service.

Appendix E.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Thirty-Four.

An Act to create a Judicial Body for reviewing Sentences and to avoid Double Trials on the Facts in Misdemeanor Cases in the District Courts and Municipal Court of the City of Boston.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Section 1. Chapter two hundred and seventy-eight of the General Laws (Tercentenary edition) is hereby amended by inserting after section twenty-six the following new sections: —

Section 26A. On and after , when a defendant enters a plea of not guilty in a district court or the municipal court of the city of Boston, upon a complaint for a crime within the final jurisdiction of said courts, or when a claimant enters a claim to property in process of forfeiture in said courts, under chapter two hundred and fifty-seven of the General Laws, the court or clerk shall, forthwith upon such plea or the entry of such claim in the court, inquire of him whether he claims a trial by jury in the superior court or chooses a trial without a jury in the district court, and may make such

explanatory statement as may seem to the court necessary or advisable for the information of the defendant or claimant. If a defendant or claimant elects to have a trial by jury his case shall forthwith be removed to the superior court. Election by a corporate defendant or claimant shall be made by its attorney of record or by the person authorized to represent it by power filed with the clerk. All of the papers in a case in which a defendant elects trial by jury shall be transmitted forthwith to the superior court, and the defendant shall be required to recognize for his appearance before the superior court in such form and with such surety or sureties, if any, as the court may require, with condition to appear in the superior court at such time as the court may order and in default thereof he shall be committed to jail.

Upon such removal said courts shall have like power to bind witnesses in the case by recognizance as it has by chapter two hundred and seventy-six when a prisoner is admitted to bail or committed.

In any case removed under this section, a defendant at any time prior to the sitting in the superior court for criminal business next following the date of such removal may file in the superior court a waiver of jury trial and request that his case be disposed of in the district or municipal court from which it was removed, and thereupon the case shall be remanded to said district or municipal court; and the defendant shall not thereafter be entitled to claim a jury trial.

If such defendant or claimant does not so elect to have a trial by jury he shall be deemed to have waived the same. As to all defendants arraigned

or claimants appearing in said courts on and after , there shall be no appeal from any decision or order of said courts, except as provided in the five following sections, and the provisions for appeal contained in section twelve of chapter two hundred and seventy-three, sections four, eight and fifteen of chapter two hundred and seventy-five, section eight of chapter two hundred and seventy-six, and in section eighteen of chapter two hundred and seventy-eight shall not apply.

Section 26B. A defendant in a criminal case, or a claimant in such forfeiture proceedings, heard or tried in a district or municipal court, who is aggrieved by any ruling of a justice on a matter of law, may as of right have the ruling reported for determination by the appellate division of the judicial circuit in which said district court is situated and provided for by section one hundred and eight of chapter two hundred and thirty-one, as amended. The claim for a report shall be made known at the time of the ruling and reduced to writing and filed with the clerk within five days after a finding of guilty or final action on interlocutory proceedings, or after an order of forfeiture, and notice of such claim for a report shall be given forthwith to the district attorney by the clerk of court. The justice making the ruling shall not sit upon the review thereof. If the appellate division shall find material error, it shall correct the same by such order as justice may require, otherwise it shall affirm the action of the single justice. The justice by whom a case is heard may, without being requested, report at any time any question of law therein for the consideration of the appellate division.

Section 26C. A defendant in a criminal case or a claimant in such forfeiture proceedings may appeal from the final decision of the appellate division of any judicial circuit to the supreme judicial court. Claim of such appeal shall be filed in the office of the clerk of the district court within five days after notice is given by mail or otherwise of the decision of the appellate division to the defendant or his counsel. Copies and papers relative to the appeal shall be prepared by the clerk of the district court at the expense of the commonwealth and shall thereupon be transmitted to and entered in the law docket of the supreme judicial court as soon as may be after such appeal has been claimed. The entry in the supreme judicial court shall not transfer the cause but only the question or questions to be determined. The clerk of the district court shall forthwith, upon the transmission of the papers in such appeal, give notice thereof to the district attorney. If the defendant or claimant fails duly to perfect the appeal or to enter the same in the supreme judicial court, the appellate division of the judicial circuit may upon application of the district attorney and after notice to the defendant or his counsel order the appeal vacated and that the decision appealed from be affirmed.

Section 26D. Any defendant complaining of a sentence imposed by a district or municipal court may, upon claim thereof made at the time of order for its execution, which claim may be oral and shall be noted by the clerk, have the same summarily reviewed by the reviewing division which may make any disposition of the case that the justice imposing the sentence might have made. The defendant

shall be notified at the time of such order of his right to claim such a review.

Section 26E. There shall be a reviewing division of each judicial circuit for the review of sentences imposed in criminal cases in any district or municipal court in said circuit. The reviewing division in each judicial circuit shall consist of five judges of district or municipal courts in said circuit, who shall be appointed by the chief justice of the supreme judicial court. The provisions of section one hundred and eight of chapter two hundred and thirty-one of the General Laws, so far as applicable, shall apply as to term of office, presiding judge, quorum, compensation and expenses of judges composing said reviewing division.

The justices to act in the reviewing division shall be designated by the justices of the reviewing division, or a majority of them, of the judicial circuit in which the district court is situated as in the case of the appellate division provided for by section one hundred and ten C of chapter two hundred and thirty-one, as amended.

Section 26F. Whoever having been arraigned in the municipal court of the city of Boston or in a district court prior to , or before a trial justice at any time, or whoever, being a juvenile proceeded against under chapter one hundred and nineteen or sections fifty-seven to sixty of chapter two hundred and eighteen, is convicted of a crime before a district court or said municipal court or trial justice may appeal to the superior court, and at the time of conviction shall be notified of his right to take such appeal. The case shall be entered in the superior court on the return day next after the ap-

peal is taken, and the appellant shall be committed to abide the sentence of said court until he recognizes to the commonwealth, in such sum and with such surety or sureties as the court or trial justice requires, with condition to appear at the superior court on said return day and at any subsequent time to which the case may be continued, if not previously surrendered and discharged, and so from time to time until the final sentence, order or decree of the court thereon, and to abide such final sentence, order or decree, and not depart without leave, and in the meantime to keep the peace and be of good behavior. In any such case the appellant may, in the discretion of the court or trial justice, be held on his own recognizance. The appellant shall not be required to advance any fees upon claiming his appeal or in prosecuting the same.

SECTION 2. Section thirty of chapter two hundred and eighteen of General Laws (Tercentenary edition) is hereby amended by striking out in the third, fourth and fifth lines the following words: — "And may so commit or bind over persons brought before them who appear to be guilty of crimes within their final jurisdiction," — so as to read as follows: — *Section 30.* They shall commit or bind over for trial in superior court persons brought before them who appear to be guilty of crimes not within their final jurisdiction. In such cases the clerk of the district court shall forthwith transmit to the clerk of the superior court a copy of the complaint and of the record, the original recognizances, a list of the witnesses, a statement of the expenses and the appearance of the attorney for the

defendant, if any is entered, and the report of the department of mental diseases as to the mental condition of the defendant, if such report has been filed under the provisions of section one hundred A of chapter one hundred and twenty-three, and no other papers need be transmitted. If such a person is committed for failure to recognize as ordered, the superior court shall thereupon have jurisdiction of the case against such person for the purpose of revising the amount of bail theretofore fixed.

Appendix F.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Thirty-Four.

An Act relating to Juries.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Section 1. Section one of chapter two hundred and thirty-four of the General Laws (Tercentenary edition) is hereby amended by striking out, in the fifteenth line, the words "members of the volunteer militia", — so as to read as follows: — *Section 1.* A person qualified to vote for representatives to the general court, whether a registered voter or not, shall be liable to serve as a juror, except that the following persons shall be exempt:

The governor; lieutenant governor; members of the council; state secretary; members and officers of the senate and house of representatives during a session of the general court; judges and justices of a court; county and associate commissioners; clerks of courts and assistant clerks and all regularly appointed officers of the courts of the United States and of the commonwealth; registers of probate and insolvency; registers of deeds; sheriffs and their deputies; constables; marshals of the United States and their

deputies, and all other officers of the United States; attorneys at law; settled ministers of the gospel; officers of colleges; preceptors and teachers of incorporated academies; registered persons under twenty-five years of age; superintendents, officers and assistants employed in or about a state hospital, insane hospital, jail, house of correction, state industrial school or state prison; keepers of lighthouses; conductors and engine drivers of railroad trains; teachers in public schools; enginemen and members of the fire department of Boston, and of other cities and towns in which such exemption has been made by vote of the city council or the inhabitants of the town, respectively.

SECTION 2. Section two of chapter two hundred and thirty-four of the General Laws (Tercentenary edition) is hereby amended by striking out, in the second and fourth lines, the word "liable" and inserting in place thereof the word: — eligible, — so as to read as follows: — *Section 2.* A person attending and serving as a juror in any court in pursuance of a draft shall not be eligible to be drawn or to so serve again within three years after the termination of such service, except in Nantucket and Dukes counties, in which he shall be so eligible once in every two years.

SECTION 3. Section three A of chapter two hundred and thirty-four of the General Laws (Tercentenary edition) is hereby amended by adding at the end thereof the following: — Such justice may for cause deemed by him to be sufficient excuse or discharge any person from jury service, — so as to read as follows: — *Section 3A.* The presiding justice at a

sitting of the court with juries may, in his discretion, postpone the whole or any part of the time of service of a juror to a later day during the same or a subsequent sitting; and the presiding justice may thereupon make an order that such juror whose term of service is so postponed to a day certain, shall attend at the opening of the court on that day, and thereafter, until he is discharged from such service. But no such juror whose term of service or part thereof is postponed shall be required to serve for a greater number of days than he would have been required to serve if such postponement had not been granted. Such justice may for cause deemed by him to be sufficient excuse or discharge any person from jury service.

SECTION 4. Chapter two hundred and thirty-four of the General Laws (Tercentenary edition) is hereby amended by inserting after section three A the following new section: —

Section 3B. The chief justice of the superior court, or any justice of the said court who shall be designated by the said chief justice, shall appoint a jury commissioner for each county for the term of five years, at such annual salary, not exceeding dollars, as the chief justice may determine. Any jury commissioner shall appoint such assistants upon such terms and conditions as the chief justice may, in writing, approve, but no said appointees shall be subject to the civil service laws. The said commissioner and his assistants shall also receive such traveling expenses as were necessarily incurred in the performance of their duties. The county, for which the said commissioner is appointed, shall furnish him with a suitable office in the courthouse of the principal shire

town in said county, together with the necessary equipment and supplies. No jury commissioner shall, during his term in office, participate in the trial of any case before a jury in the county for which he is commissioner.

SECTION 5. Section four of chapter two hundred and thirty-four of the General Laws (Tercentenary edition) is hereby amended by striking out said section and inserting in place thereof the following: —

Section 4. The jury commissioner shall annually, before July first, prepare a list of such inhabitants of every city and town in the county who are qualified, as provided in section one, and who are of good moral character, of sound judgment, and free from all legal exceptions, not exempt from jury service under section one or two, as he thinks qualified to serve as jurors. He shall not place the name of any person on said list unless such person is determined to be qualified as aforesaid upon the knowledge of said commissioner or upon the receipt, by him, of reliable information indicating that said person is so qualified. The commissioner may summon persons to appear before him for examination as to their qualifications for jury service, and may compel their attendance before him and the giving of testimony in the same manner and to the same extent as may magistrates authorized to summon and compel the attendance of witnesses. The jury commissioner is authorized to administer oaths to any witnesses for the purpose of making such examinations. The jury commissioner may further investigate by inquiries at such person's place of residence and of business or employment, or by other means, his reputation, character and fitness

for such service. He may also summon to appear before him any person who shall under oath answer all questions and give such information relating to the character or fitness for jury service of any person; such information shall be confidential.

Such lists, so prepared by the commissioner, shall include not less than one juror for every one hundred inhabitants, nor more than one for every sixty, according to the latest census, state or national, but in Nantucket or Dukes county, it may include one for every thirty inhabitants. In no event shall a person's name appear on the jury lists for more than three successive years or on more than two such lists in any six-year period, nor shall such lists contain the name of any person who has been convicted of any felony.

In the preparation of the said lists, the election commissioners, the registrars of voters, in cities, and the selectmen in towns, and the chief of police or the police commissioner or the official having charge of the police, shall upon request of said commissioner furnish him all such assistance as he deems proper to enable him to perform his duties. Any election commissioner, registrar of voters, selectman or police official who neglects or refuses to furnish such assistance shall be fined not more than five hundred dollars.

SECTION 6. Section five of chapter two hundred and thirty-four of the General Laws (Tercentenary edition) is hereby amended by striking out said section and inserting in place thereof the following: —

Section 5. A copy of jury lists containing the address and occupation of each juror shall annually, before August first, be furnished to the clerks and

assistant clerks of the supreme judicial and superior courts in each county, to be kept by said clerks and assistant clerks for the use of said courts. A similar copy shall be kept for public inspection at the office of the jury commissioner.

SECTION 7. Section six of chapter two hundred and thirty-four of the General Laws (Tercentenary edition) is hereby amended by striking out said section and inserting in place thereof the following: —

Section 6. The jury commissioner may, from time to time, revise said lists by striking from them the names of persons found by him to be ineligible for jury service. If a jury list prepared as provided in this chapter includes less than one juror for every one hundred inhabitants of a city, the jury commissioner shall prepare a further list and like proceedings shall be had as in the case of the original list, until the required number of jurors is obtained.

SECTION 8. Sections seven, eight and nine of chapter two hundred and thirty-four of the General Laws (Tercentenary edition) are hereby repealed.

SECTION 9. Section eleven of chapter two hundred and thirty-four of the General Laws (Tercentenary edition) is hereby amended by striking out said section and inserting in place thereof the following: —

Section 11. The venires shall be delivered to the jury commissioner, who shall forthwith proceed to the drawing of jurors as hereinafter provided.

SECTION 10. Section eighteen of chapter two hundred and thirty-four of the General Laws (Tercente-

nary edition) is hereby amended by striking out said section and inserting in place thereof the following: —

Section 18. For the purpose of drawing jurors the jury commissioner shall provide a separate box for each city and town, and the name of the city or town for which a box is used shall be legibly marked on said box. The name of each individual remaining on the jury commissioner's list shall be on a separate piece of paper, which shall be placed in the box marked with the name of the city or town of the individual. Upon receipt of venires by the jury commissioner, he shall seasonably notify the chief justice of the superior court of the time or times of a public meeting or meetings in his office for the purpose of drawing jurors, and the said chief justice may if he sees fit appoint one of the justices of the superior court to take part in the drawing of said jurors. Notice of the time and place of such public meeting shall be given by publication in at least one newspaper published in the county seat for at least three days prior to such meeting. The jury commissioner at said meeting shall in the presence of the appointee of said chief justice mix together the slips containing the names in said boxes and, without seeing the names written on said slips, draw from each box by lot the number of names required. He shall read each name aloud when drawn, pass the slip of paper on which it appears to the appointee of said chief justice if such appointee is present, and shall then cause it to be written in the order in which it was drawn upon a list provided for that purpose. At the bottom of each list the jury commissioner shall certify that the drawing was in accordance with law. All lists shall be filed in the office of the jury commissioner. A copy

of such certified lists, together with the address and occupation of each drawn juror, shall be furnished to the clerks and assistant clerks of the supreme judicial and superior courts in the county.

SECTION 11. Section nineteen of chapter two hundred and thirty-four of the General Laws (Tercentenary edition) is hereby repealed.

SECTION 12. Section twenty of chapter two hundred and thirty-four of the General Laws (Tercentenary edition) is hereby amended by striking out said section and inserting in place thereof the following: —

Section 20. If a person drawn as provided in section eighteen is unable by reason of illness or absence from home to attend as a juror, his name shall thereupon be returned to the box and another drawn.

SECTION 13. Sections twenty-one and twenty-two of chapter two hundred and thirty-four of the General Laws (Tercentenary edition), are hereby repealed.

SECTION 14. Section twenty-five of chapter two hundred and thirty-four of the General Laws (Tercentenary edition) is hereby amended by striking out said section and inserting in place thereof the following: —

Section 25. Each county shall provide a common room in each courthouse for the use of jurors, who shall make said room their headquarters during the sessions of court. On the day when jurors are summoned to attend at court for the trial of civil or criminal cases, except capital cases, a clerk or an assistant clerk of court, to be designated by the chief

justice of the superior court, shall cause the name, place of abode, and occupation of each person so summoned to be written on separate ballots, substantially of uniform size, and cause them to be placed in a box provided therefor. When a case is ready for trial in any session for either civil or criminal business the clerk in that session shall repair to the jury hall, wherein the assistant clerk in charge of the common jury room, after shaking the ballots thoroughly, shall draw them out of the jury box in succession until the names of twelve are drawn who appear and are not excused or set aside. Parties and their attorneys of record shall be entitled to reasonable notice of and to be present at such drawing, and shall then exercise all peremptory challenges to which they may be entitled. The twelve men finally selected as jurors shall forthwith be conducted by an officer designated by the court to the session of court for which they were drawn, shall be duly sworn and impanelled and shall be the jury to try the issue, and one of them shall be appointed foreman by the court. The ballots containing names of the jurors so sworn shall be kept apart by the clerk in charge of the common jury box until the verdict of such jury has been recorded or such jury has been discharged, when such ballots shall be returned to the box.

Appendix G.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Thirty-Four.

An Act clarifying the Law relative to Professional Bondsmen.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Section sixty-one B of chapter two hundred and seventy-six of the General Laws is hereby amended by striking out, in the twenty-eighth line therein, the words "surety companies or to", — so as to read as follows: — *Section 61B.* No person proposing to become bail or surety in a criminal case for hire or reward, either received or to be received, shall be accepted as such unless he shall have been approved and registered as a professional bondsman by the superior court or a justice thereof. No person proposing to become bail or surety in a criminal case in any calendar year after having become bail or surety in criminal cases on five separate occasions in said year shall be accepted thereafter during said year as bail or surety unless he shall have been approved and registered as a professional bondsman as aforesaid. A person who has been accepted as bail or surety, contrary to the provisions of this section, shall never-

theless be liable on his obligation as such bail or surety. Such approval and registration may be revoked at any time by such court or a justice thereof, and shall be revoked in case such a bondsman fails for thirty days after demand to satisfy in full a judgment recovered under section seventy-four or a new judgment entered on review under section seventy-six. The district attorney or prosecuting officer obtaining any such judgment which is not satisfied in full as aforesaid shall, forthwith upon the expiration of such period of thirty days, notify in writing the chief justice of such court. All professional bondsmen shall be governed by rules which shall be established from time to time by the superior court. Any unregistered person receiving hire or reward for his service as bail or surety in any criminal case, and any unregistered person becoming bail or surety in any criminal case in any calendar year after having become bail or surety in criminal cases on five separate occasions in said year, and any professional bondsman violating any provision of the rules established hereunder for such bondsman, shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than one year, or both. The provisions of this section shall not apply to probation officers.

A person shall be deemed to have become bail or surety on a separate occasion within the meaning of this section if he becomes such, (1) for a person in respect to a single offence; or (2) for a person in respect to two or more offences wherefor he at one and the same time offers bail or surety, or in respect to two or more offences committed at the same time or arising out of the same transaction or course of conduct

wherefor he at different times offers bail or surety; or (3) for two or more persons at the same time offering bail or surety in respect to offences committed jointly or in common course of conduct. Becoming bail or surety for the same person or persons in subsequent proceedings in connection with prosecution for the same offence or offences shall not be deemed an additional occasion or occasions.

APPENDIX H.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Thirty-Four.

An Act relative to Approval of Sureties in Certain Bail Cases.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Section fifty-seven of chapter two hundred and seventy-six of the General Laws (Tercentenary edition) is hereby amended by inserting after the words "for him" in the eleventh line the following words: — except that, if the prisoner is charged with a felony and was committed with an order fixing the amount of bail at five thousand dollars or more in any case, then any person offering real estate as his qualification for his acceptance as bail or surety must be examined for approval by a justice or clerk of the court in which the prisoner is required to appear, — so as to read as follows: — *Section 57.* A justice of the supreme judicial or superior court, a clerk of courts or the clerk of the superior court for criminal business in the county of Suffolk, a standing or special commissioner appointed by either of said courts or, in the county of Suffolk, by the sheriff of said county with the approval of the superior court, a justice or clerk of a district

court, a master in chancery or a trial justice, upon application of a prisoner or witness held under arrest or committed, either with or without a warrant, or held in the custody of an officer under a mittimus may inquire into the case and admit such prisoner or witness to bail, and may admit to bail any person committed for not finding sureties to recognize for him; except that, if the prisoner is charged with a felony and was committed with an order fixing the amount of bail at five thousand dollars or more in any case, then any person offering real estate as his qualification for his acceptance as bail or surety must be examined for approval by a justice or clerk of the court in which the prisoner is required to appear. All persons authorized to take bail under this section shall be governed by the rules established by the supreme judicial or superior court. No person offering himself as surety shall be deemed to be insufficient if he deposits money of an amount equal to the amount of the bail required of him in such recognizance, or a bank book of a savings bank or of the savings department of a trust company or national bank, doing business in the commonwealth, properly assigned to the clerk or trial justice with whom the same is or is to be deposited, and his successors, and satisfactory to the person so authorized to take bail, or deposits non-registered bonds of the United States or of the commonwealth or of any county, city or town within the commonwealth equal at their face value to the amount of the bail required of him in such recognizance. The sheriff of Suffolk county may, with the approval of the superior court, appoint standing or special commissioners to take bail to a number not exceeding twenty and may, with like approval, remove them.

Before the amount of bail of a prisoner charged with an offence punishable by imprisonment for more than one year is fixed in court, the court shall obtain from its probation officer all available information relative to prior criminal prosecutions, if any, of the prisoner and to the disposition of each such prosecution.

Appendix I.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Thirty-Four.

An Act to create a Lien on Real Estate offered as Security in Certain Bail Cases.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Section 1. Section sixty-one A of chapter two hundred and seventy-six of the General Laws (Tercentenary edition) is hereby amended by striking out said section and inserting in place thereof the following: —

Section 61A. Whenever a person becomes bail or surety in a criminal case and has offered real estate as his qualification for his acceptance as such bail or surety, the amount of such bail shall be a lien upon his real estate, which lien shall take effect upon the filing for record in the registry of deeds for the county where the real estate lies of a statement by the magistrate, or other person who approved the bail or surety, that such person was so approved as bail or surety, and said lien will continue until the liability as such bail or surety is terminated. Such statement shall contain the name of the surety, a description of the real estate sufficiently accurate for identification, the

amount of the bail, the name of the person bailed, and the name of the court in which the bailed person was to appear. The magistrate who admits the defendant to bail shall forthwith file the statement herein mentioned with the registry of deeds for recording.

The register of deeds shall receive and record, or in cases of registered land, file and register, said statement. Such lien may be dissolved by filing for record a certificate, under seal of the court in which the bailed person was to appear, to the effect that the liability of said person acting as bail or surety has been terminated.

SECTION 2. Section seventy-four of chapter two hundred and seventy-six of the General Laws (Tercentenary edition) is hereby amended by adding at the end thereof the following new sentence: — The issuance of an execution on any such judgment against a surety whose real estate is subject to a lien under section sixty-one A of this chapter shall be conclusive of the establishment and validity of the lien, and such land may be sold on the execution as provided in chapter two hundred and thirty-six, sections twenty-seven to thirty, except that an interest in land sold under this execution may not be redeemed as provided for other sales of land on execution.

SECTION 3. Section twenty-three of chapter two hundred and sixty-two of the General Laws (Tercentenary edition) is hereby amended by inserting after the word "fees" in the fourth line the following: — together with the fees payable under section thirty-eight or under section thirty-nine for the

recording of the notice required by section sixty-one A, — so as to read as follows: — *Section 23.* The fees of magistrates for the examination of sureties and approval of bonds or for the taking of recognizances shall be in each case two dollars for the citation, if any, and the first day's hearing and two dollars in addition for each adjournment thereof. These fees, together with the fees payable under section thirty-eight or under section thirty-nine for the recording of the notice required by section sixty-one A, shall be paid in advance.

SECTION 4. Section thirty-eight of chapter two hundred and sixty-two of the General Laws (Tercentenary edition) is hereby amended just before the last paragraph thereof by inserting the following: — For entering and filing a statement of a magistrate as required by section sixty-one A of chapter two hundred and seventy-six of the General Laws (Tercentenary edition), fifty cents.

SECTION 5. Section thirty-nine of chapter two hundred and sixty-two of the General Laws (Tercentenary edition) is hereby amended by adding at the end thereof the following: — For filing and registering a statement required by section sixty-one A, chapter two hundred and seventy-six of the General Laws (Tercentenary edition), fifty cents.

Appendix J.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Thirty-Four.

An Act relative to the Conditions in Certain Bail Bonds.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Section sixty-five of the General Laws (Tercentenary edition), chapter two hundred and seventy-six, is amended by adding at the end thereof the following: — In every such recognizance with surety or sureties there shall be contained an irrevocable power of attorney to be executed by each of the sureties appointing the district attorney of the particular district or the clerk of court in which the prisoner is required to appear as his attorney to accept service of process for him and in his behalf in any suit or proceeding commenced against him arising under or out of the undertaking in such recognizance or bail bond, and also to confess to judgment against him in any such suit or proceeding without further notice, — so as to read as follows: — *Section 65.* The condition of a recognizance of a person, either with or without surety, binding him to appear before a court or justice to answer to a charge against him or to prosecute an appeal shall be so framed as to bind him per-

sonally to appear at the time so expressed, and at any subsequent time to which the case may be continued, unless previously surrendered or discharged, and so from time to time, until the final decree, sentence or order of the court or justice thereon, and to abide such final sentence, order or decree, and not depart without leave. A recognizance of a person held to answer to a complaint before a district court which is required by law to sit in more than one municipality may, with his consent or at his request, be conditioned for his appearance at the next sitting of the court at any one of said municipalities. In every such recognizance with surety or sureties there shall be contained an irrevocable power of attorney to be executed by each of the sureties appointing the district attorney of the particular district as his attorney to accept service of process for him and in his behalf to any suit or proceeding commenced against him arising under or out of the undertaking in such recognizance or bail bond, and also to confess to judgment against him in any such suit or proceeding without any further notice.

Appendix K.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Thirty-Four.

An Act relative to Action and Judgment on Recognizances.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Section 1. Section seventy-four of chapter two hundred and seventy-six of the General Laws (Tercentenary edition) is hereby amended by striking out said section and inserting in place thereof the following: —

Section 74. If the penalty of a recognizance with surety or sureties of a party or witness in a criminal prosecution is adjudged defaulted, the district attorney shall forthwith commence suit on the recognizance, and judgment shall be confessed therein within ten days thereafter in accordance with the power of attorney contained in such recognizance. The court may render judgment, upon such terms as it may order against the principal or surety or both for the whole of the penalty with interest or in its discretion for a part thereof, upon the filing in the case of a certificate of the district attorney or prosecuting officer stating that the interests of justice

would be furthered thereby and setting forth specifically the reasons therefor; and no person shall, on behalf of the commonwealth, accept in satisfaction of any such judgment or any new judgment entered on review under section seventy-six any sum less than the full amount thereof. The issuance of an execution on any such judgment against a surety whose real estate is subject to a lien under section sixty-one A of this chapter shall be conclusive of the establishment and validity of the lien, and such land may be sold on the execution as provided in chapter two hundred and thirty-six, sections twenty-seven to thirty, except that an interest in land sold under this execution may not be redeemed as provided for other sales of land on execution.

SECTION 2. Chapter two hundred and seventy-six of the General Laws (Tercentenary edition) is hereby amended by inserting after section seventy-four the following new section: —

Section 74A. Every district attorney shall furnish on the second Tuesday of each calendar month to the chief justice of the superior court a written statement setting forth the name of the defendant in each defaulted criminal case, including district court cases of which he has been notified of default, the nature of the offence, the date of the default, the amount of the bail, the name of the surety or sureties, and the status or disposition of proceedings against the surety or sureties.

Appendix L.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Thirty-Four.

An Act concerning the Service of Search Warrants and of Warrants for Arrests.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Section 1. Chapter two hundred and seventy-six of the General Laws is hereby amended by inserting after section three thereof the following new section: —

Section 3A. Every officer to whom a warrant to search is issued shall return the same to the court by which it was issued not later than seven days from his receipt thereof, with a return of his doings thereon, unless the return of the warrant at some later date is authorized by the court.

Section 2. Chapter two hundred and seventy-six of the General Laws, Tercentenary edition, is hereby amended by inserting after section twenty-three the following new section: —

Section 23A. Every officer who shall receive for execution a warrant for the apprehension of a person or persons charged with crime shall return the same to the court by which it was issued not later than

thirty days from the date of his receipt thereof, or within such other period as he may be directed by the court, with a return of his doings thereon; if he has been unable to locate the person or persons named in the warrant within such period, he shall before filing the warrant appear in person before the court and report what efforts he has made to execute it.

APPENDIX M.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Thirty-Four.

An Act to provide for the Non-Criminal Disposition of Charges for Violation of Certain Motor Vehicle Laws and Rules and Regulations.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Chapter ninety of the General Laws is hereby amended by inserting after section twenty the following new section: —

Section 20A. It shall be the duty of any police officer who takes cognizance of a violation of any provision of any rule or regulation made by the department of public works under authority of section two of chapter eighty-five, or of any rule, regulation, order, ordinance or by-law regulating motor vehicles or their operation established by any city or town or by any commission or body empowered by law to make such rules or regulations therein, to forthwith give to the offender a notice to appear before the clerk of the district court having jurisdiction, at any time or during office hours not later than five days after the time of said violation. Such notice shall be made in triplicate, and shall

contain the name, address and operator's license number, if any, of the offender; the registration number of the vehicle involved, the time and place of the violation, the specific offence charged, and the time and place of appearance. Such notice shall be signed by the officer, and shall be signed by the offender whenever practicable in acknowledgment that the notice has been received. The officer shall if possible deliver to the offender at the time and place of the violation a copy of said notice. Whenever it is not possible to deliver a copy of said notice to the offender at the time and place of the violation, said copy shall be sent him by the officer within twenty-four hours of the offence by registered mail directed to the address given in the offender's motor vehicle registration. At the completion of each tour of duty the officer shall give to his commanding officer two copies of each notice delivered or mailed as aforesaid. Said commanding officer shall retain and safely preserve one of said copies, and shall, at a time not later than the beginning of the next court day, deliver the other copy to the clerk of the court before whom the offender has been notified to appear.

The clerk of each district court shall maintain a docket of all such notices to appear. In case any offender fails to appear in accordance with such notice issued to him, the clerk shall notify the registrar, who shall forthwith revoke the right of such person to operate, or his operator's license, if any, and shall reinstate such right, or issue another license to such person only upon notice from the district court that the case has been disposed of in accordance with law.

Any person notified to appear before the clerk of

a district court as provided herein, instead of appearing personally may appear through any person duly authorized by him in writing. Any such offender, or in his absence a person authorized, may request the clerk of the court that the offence charged be taken for confessed, and unless it appears that it is the fourth or more offence charged against such person for a violation of any provision mentioned in this section committed within the jurisdiction of the district court within a period of twelve months, may pay said clerk such fine or forfeiture as may be established for such violation by standing order of the chief justice of the municipal court of the city of Boston for said court, and by standing order of the administrative committee of the district courts as created by section forty-three A of chapter two hundred and eighteen for said courts, not to exceed the maximum fine or forfeiture provided by law. The payment of the fine or forfeiture to the clerk of the court in the manner herein provided shall operate as a final disposition of the case, and the proceedings shall not be deemed criminal.

A full record shall be kept by the clerk of each district court of every case disposed of by the payment of a fine or forfeiture to the clerk of the court as provided herein, and an abstract of such record shall be sent forthwith by the clerk to the registrar upon forms to be provided by the registrar, and every such abstract shall be certified by the clerk of the court as a true abstract of the case. The registrar shall keep said abstracts in his main office, and they shall be open to the inspection of any person during reasonable business hours.

Should any person notified to appear as provided

herein fail to appear, or having appeared shall desire not to avail himself of the benefits of the procedure established by this section, or should the charge be the fourth or more offence charged against such person for a violation of any provision mentioned in this section committed within the jurisdiction of the district court within a period of twelve months, the clerk shall as soon as may be notify the officer concerned, who shall forthwith make a complaint and follow the procedure established for criminal cases.

The notices to appear, provided herein, shall be printed by the registrar and shall be numbered serially. The registrar shall distribute such notices to the clerks of the district courts upon request, and shall take a receipt therefor. The clerks of the district courts shall distribute such notices to the commanding officers of police departments upon request, and shall take a receipt therefor.

Entered as Second-Class Matter at the Post Office at Boston.